1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3
4
5
6 RICHARD BOEKEN,)
)
7 Plaintiff,)
)
8 vs.) NO. BC226593
)
9 PHILIP MORRIS, INCORPORATED, a)
corporation; INTERNATIONAL HOUSE OF)
10 PANCAKES, INCORPORATED, a corporation;)
DOES 1-100, inclusive,)
11)
Defendants.)
12)
13
14
15
16 DEPOSITION OF CLAIRE KRUPPE, M.D., taken
17 on behalf of the Plaintiff, at 1750 East Fourth
18 Street, Suite 450, Santa Ana, California,
19 commencing at 2:10 P.M., on Monday, March 12,
20 2001, before DONNA J. RUDOLPH, CSR NO. 9652, in and
21 for the State of California.
22
23
24
25
2
1 APPEARANCES
2 For Plaintiff:
3 LAW OFFICES OF MICHAEL J. PIUZE
By: Michael J. Piuze, Esq.
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6
For Defendants:
7
ARNOLD & PORTER
8 By: Angel L. Tang
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11
Also Present:
12
Chris Johnson, Esq.
13 Mary Pat Reardon, R.N.
14
15
16
17
18
19
20
21

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17 A photocopy of an article,
15 entitled "Pulmonary Neoplasms" 131
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18 INFORMATION REQUESTED
19 (None.)
20
21 MARKED QUESTIONS
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1 SANTA ANA, CALIFORNIA; MONDAY, MARCH 12, 2001
2 2:10 P.M.
3
4 CLAIRE KRUPPE, M.D.,
5 the Witness herein, being first duly
6 sworn, deposed and testified as follows:
7
8 EXAMINATION
9 BY MR. PIUZE:
10 Q What's your name?
11 A Claire Kruppe.
12 Q Your occupation?
13 A I'm a physician.
14 Q What kind?
15 A Pathologist.
16 Q Where do you work?
17 A St. Joseph's Hospital in Orange.
18 Q Do you have a C.V.?
19 A Yes, I do.
20 Q Can I have it?
21 A Yes. Here you go.
22 MR. PIUZE: Make this Exhibit 1.
23 (Whereupon, the document referred to
24 was marked Plaintiff's Exhibit 1 for
25 identification, a copy of which is
6
1 attached hereto.)
2 BY MR. PIUZE:
3 Q When were you hired in this case?
4 A I was contacted about a month and a half -- two
5 months ago.
6 Q Is there a difference between hired and
7 contacted?
8 A I guess not.
9 Q Okay.
10 Who contacted you?
11 A I was first contacted by Mitzi Dobson from
12 the -- from this office.
13 Q What is this office?
14 A This is the Bonne, Bridges office.
15 Q Are we in Orange County?
16 A Yes.
17 Q Is Bonne, Bridges a medical malpractice defense
18 firm?
19 A I believe --
20 MS. TANG: Objection. Calls for speculation.
21 MR. PIUZE: Think so?
22 MS. TANG: Yes.
23 THE WITNESS: I believe so. I'm not certain.

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BY MR. PIUZE:
Q Did you ask to have your deposition taken here
7
today?
A Yes, I did.
Q Why?
A Because it's close to my site of work.
Q It's not close to mine, though.
Did you ask for this particular building?
A No.
Q Have you ever been in this office before?
A No.
Q So someone from Bonne, Bridges contacted you?
A Yes, because I had done work with them before,
I guess.
Q As an expert witness --
A Yes.
Q -- defending doctors --
A Yes.
Q -- being sued for malpractice?
A Yes.
Q How many times?
A Once.
Q Okay.
So what'd she say?
A She said would I be willing to review some
cases for malpractice -- or not malpractice. I'm sorry.
Would I be willing to review some cases, some supplies
8
for --
Q For what?
A At that time I -- I think the first time that
she contacted me I wasn't aware of what it was specifically
about.
Q Was -- when you just said she contacted you and
asked if you'd review some stuff "for malpractice," was
that a Freudian slip, a mistake, or is that what she said?
A Mistake.
Q Did you ask her what your task was going to be?
A Yes.
Q Did you, "Say who's getting sued? Do I know
this person is getting sued?"
A No.
Q What'd you say?
A I asked her what this would be concerning, and
she said, "Reviewing some slides, looking at slides on lung
cancer."
Q Okay.
What -- for what purpose?
A And this would be concerning cases that were
concerning litigation over smoking tobacco induced,
possibly.
Q Okay.
You asked that; right? You asked why would you
9
want me to be looking at these slides?
A I don't really remember specifically whether
she volunteered that or I asked.
Q A couple of times in your previous answers,
you've used the plural for "cases," et cetera, and how many
have you looked at?
A Two.
Q What's the name of the other one?

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9 A I don't remember the name. Sanchez, I believe.
10 Q Sanchez versus?
11 A I -- I don't know who it was versus. I just
12 looked at slides at that time.
13 Q Okay.
14 Have you given a deposition in that case?
15 A No.
16 Q Written report in that case?
17 A No.
18 Q Written report in this case?
19 A No.
20 Q Okay.
21 Have you ever been involved as an expert
22 consultant in any kind of a case other than malpractice
23 before this one?
24 A Could you repeat that again?
25 Q Sure.
10
1 Have you ever been involved as an expert
2 consultant in any kind of a case, except malpractice before
3 this one?
4 A No.
5 Q How many times have you been a consultant in a
6 malpractice case?
7 A Five times.
8 Q Okay.
9 Just so you and I are on the same wavelength, I
10 don't mean designated witness. Now, I mean a consultant
11 give some stuff or informed opinions?
12 A Right.
13 Q Five times?
14 A Yes.
15 Q For whom?
16 A Three of those were -- I really don't know
17 the -- I don't remember the firms that approached me. But
18 the other three cases involved cases concerning AIDS
19 induced -- or transfusion-induced AIDS.
20 Q Okay.
21 A doctor was getting sued in each of those?
22 A Usually, I think, in -- in all three of the
23 cases, it was an institution. It wasn't a particular
24 physician.
25 Q Okay.
11
1 A hospital.
2 A Right.
3 Q And these lawyers are representing the
4 hospital?
5 A Right.
6 Q So that's three AIDS, one where Mitzi called
7 you once before.
8 Where's the fist?
9 A And this case.
10 Q This is the fifth. Sanchez is the sixth?
11 A Correct.
12 Q Okay.
13 What did you just look at in your materials
14 that let you tell me that's that Sanchez?
15 A I just have a list of people who have contacted
16 me for legal cases recently.
17 Q Okay.
18 Who contacted you on Sanchez?
19 A That was Wombol, Carlisle, Sanchez. It was a

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20 Lee Chaney.
21 Q Say it again.
22 A Lee Chaney.
23 Q Yeah, I'm sorry.
24 A From a firm Wombol, Carlisle, Sandrich and
25 Rice.
12
1 Q Okay.
2 Why don't you tell us the spelling of the first
3 name?
4 A Womble?
5 Q Yeah.
6 A W-o-m-b-l-e.
7 Q Okay.
8 After you were contacted, did you have to have
9 a second call before you said "yes"?
10 A No.
11 Q What were you given?
12 A Could you explain that? What was I given.
13 Q Yeah.
14 You're a pathologist?
15 A Yes.
16 Q You were given slides?
17 A Yes.
18 Q What slides?
19 A On this case?
20 Q Yes.
21 A The current case?
22 Q Yes.
23 A I was given slides from the resection, and I
24 believe I had slides to review from biopsy. Prior to that,
25 I'm not sure. I don't really remember. But I had
13
1 primarily the slides from the resection to review.
2 Q How did they get to you?
3 A Mr. Johnson brought them to me.
4 Q Who's Mr. Johnson?
5 A He's a representative of the legal firm.
6 Q What legal firm?
7 A And -- that firm. Let me get this straight.
8 If I can remember, it's Shook, Hardy and Bacon.
9 Q Have you ever heard of Shook, Hardy and Bacon?
10 A Never.
11 Q Well, certainly you have because you just
12 looked at something.
13 When did you first --
14 MS. TANG: Objection.
15 MR. PIUZE: What would that be?
16 MS. TANG: Statement of interest. Argumentative.
17 MR. PIUZE: You object to my statement?
18 MS. TANG: Yes.
19 BY MR. PIUZE:
20 Q Did you just look at some piece of paper that
21 said Shook, Hardy and Bacon?
22 A Yes, I did.
23 MR. PIUZE: Well, I don't object to your statement.
24 Q How can you get in -- what's his name again?
25 A Chris Johnson.
14
1 Q What'd you get in contact with him?
2 A He got in contact with me.
3 Q When?
4 A About two months ago.

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Q What was said?
A He had the slides to go over with me.
Q Do you know my client's name?
A No, I don't.
Q Do you know who the slides belonged to?
A Cedars Sinai, I believe.
Q Okay.
Do you know who material came from?
A Could you be more specific?
Q It came out of somebody's body.
A Yes.
Q Whose?
A Your client.
Q You don't know the name.
A I believe it's Becky, I'm not sure.
Q Boek- -- how do you spell Becky?
A I don't know.
Q Okay.
Bonne, Bridges contacted you first.
A Yes.
Q Were there any other contacts with Bonne,

Bridges before Shook, Hardy and Bacon contacted you?
A Just the one that she called.
Q One phone call?
A Yes.
Q Would you do this for me?
A Yes.
Q Yes, I do.
A Yes.
Q Someone will be contacting you?
A Yes.
Q And it was Chris?
A Correct.
Q How long after the original call?
A Couple of weeks.
Q Okay.
What did Chris have to say for himself?
A He came by with the slides.
Q Have you ever talked to the Bonne, Bridges
lawyer again about this case after that phone call?
A Yes.
Q When?
A She came -- Mitzi Dobson came during a couple
of meetings that we had. I believe Angel was at one of
them and a second meeting that we had going over what, my
review of the case.

Q Who's Angel?
A Angel is the court -- I guess -- I don't know
really the term that they use. I don't know.
Q Well, is Angel like a word of art or a term of
endearment, or what is that? What is Angel?
A Angel is one of the legal representatives on
this case.
Q Is Angel a lawyer?
A Yes.
Q What's her last name?
A I don't know.
Q What firm does she work for?
A I don't know the name.
Q How many times have you spoken with her?
A Three times.

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16 Q How many times in person?
17 A Three times.
18 Q Okay.
19 Have you ever been with her alone?
20 A No. Well, yes. Specifically, before you
21 arrived today.
22 Q Okay.
23 You've never attended a meeting just between
24 you and Angel then?
25 A No.
17
1 Q Let's hear about the first meeting with Angel
2 Tang.
3 Who was there?
4 A I believe Chris and Mitzi and Angel were there.
5 Q So lawyers from Shook, Hardy and Bacon?
6 A Yes.
7 Q Bonne, Bridges?
8 A Yes.
9 Q And what if I whispered Arnold and Porter.
10 Would Arnold and Porter sound like the place
11 Angel Tang comes from?
12 A Sounds familiar.
13 Q So one lawyer from each of these law firms?
14 A Yes.
15 Q And you?
16 A Yes.
17 Q Anyone else?
18 A No.
19 Q Where?
20 A In my office.
21 Q When?
22 A Probably about a month ago.
23 Q Do you have a record?
24 A Do I have a record?
25 Q Yes.
18
1 A Yes.
2 Q Where?
3 A On a yellow post-it somewhere. That, I left in
4 my office.
5 Q Purposely?
6 A No.
7 Q Were you told to bring certain things to your
8 deposition today?
9 A Yes.
10 Q What?
11 A Correspondence, articles or written log of some
12 articles that I may have read.
13 Q Were you told not to bring things to your
14 deposition today?
15 A No.
16 Q I'm sorry?
17 A No.
18 Q For instance, were you told not to bring
19 post-its?
20 A No.
21 Q Were you told not to make notes?
22 A No.
23 Q This is going all the way back to when you
24 first get a call from Bonne, Bridges on this case.
25 Were you told not to make notes?
19

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A No.
Q Okay. So let's run at it again. Call number one, Bonne, Bridges.
A Yes.
Q Call number two, Shook, Hardy?
A Right.
Q Next thing that happens after that is what?
A The slides were brought down. I think Chris Johnson came down with the slides.
Q Down --
A To my office.
Q From?
A San Francisco.
Q Okay.
Why do you think Mr. Boeken's has his name, Boeken?
A Okay.
Q Why do you think Mr. Boeken's path slides were in San Francisco?
A I --
MS. TANG: Objection to the form of the question.
MR. PIUZE: I'm sorry?
MS. TANG: Objection to the form of the question. It misstates --
MR. PIUZE: What's the form that's objectionable?

MS. TANG: Misstates prior testimony. She did not -- I'm sorry.
Could you repeat his question back to me?
MR. PIUZE: Your -- I don't know. I'll stand with the objection.
Go ahead.
Q What makes you think Mr. Boeken's slides were in San Francisco?
A I imagine they requested those slides.
Q Okay.
But you see, that's a reason why.
Upon what do you base your statement that his slides were in San Francisco? That's sort of what she's saying. That's what I want to know, to start with.
Did Chris told you?
A I made an assumption, I guess.
Q Chris showed up with the slides?
A Yes.
Q He's from San Francisco.
You figure the slides came from San Francisco?
A Yes.
Q Okay.
Do you know if that's true?
A No.
Q Do you know how many people reviewed those slides before you?

A No.
Q Do you know how many people were hired by the defense but before you?
A No.
Q Have you asked?
A No.
Q Has anyone told you?
A No.
Q Tell me what he brought with him.
A He brought these slides, and he had the path

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12 report.
13 Q Okay.
14 "Those slides," plural, meaning what?
15 A There were approximately 15 slides from the
16 lung resection.
17 Q Tell me about the biopsy slides.
18 When did those appear?
19 A I really don't remember seeing the biopsy
20 slides. I -- I don't remember. All I remember is seeing
21 the resection slides.
22 Q You brought the biopsy word into the
23 conversation earlier.
24 Why?
25 A I don't know. I may have been confused with
22
1 another case. I don't remember whether I saw biopsy slides
2 on this case.
3 Q Okay.
4 Which case were you confused with?
5 A Perhaps the Sanchez case.
6 Q Is that your best answer?
7 A Yes.
8 Q Have you seen biopsy slides on the Sanchez
9 case?
10 A Yes.
11 Q Did you ask for biopsy slides in the Sanchez
12 case?
13 A No.
14 Q Did you ask for anything on this case?
15 A No.
16 Q You haven't asked for anything?
17 A No.
18 Q How about money?
19 A Oh, yes.
20 Q What'd you ask for?
21 A $300 an hour.
22 Q Did you get it?
23 A I have not as yet.
24 Q Who's supposed to pay?
25 A I believe Shook Hardy.
23
1 Q Why do you believe that?
2 A That's who my letter went to.
3 Q "Letter," meaning bill?
4 A Yes.
5 Q Okay.
6 He delivers, "he" Chris, delivers the slides to
7 your office just the two of you?
8 A Yes.
9 Q No one else was there that day?
10 A No.
11 Q What was discussed?
12 A I went through the slides and just reviewed the
13 slides independently of looking at the report. And then
14 reviewed with him what my impression was of the tumor --
15 Q Had you seen --
16 A -- in this case.
17 Q I apologize for interrupting.
18 Had you seen the report before you reviewed the
19 slides?
20 A No.
21 Q What'd you tell him?
22 A My first impression was that this was a

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23 bronchioalveolar carcinoma.
24 Q Spell it.
25 A B-r-o-n-c-h-i-o-a-l-v-e-o-l-a-r
24
1 c-a-r-c-i-n-o-m-a.
2 Q Was that your last impression?
3 A No.
4 Q How many impressions have you had?
5 A Two.
6 Q How long did your first impression last?
7 A For probably a couple of weeks.
8 Q Now you tell him your impression. You're in
9 your office. You tell him your impression.
10 Did he show you anything else that day?
11 A Yes.
12 Q What?
13 A The path report.
14 Q What'd the path report say?
15 A This -- diagnosis is a papillary carcinoma.
16 Q Spell that.
17 A P-a-p-i-l-l-a-r-y.
18 Q Tell me the difference between the two.
19 A There are subtle differences between the two.
20 One has a papillary-type architecture with cells
21 surrounding vascular stroma or stocks and a
22 bronchioalveolar carcinoma generally is one that grows
23 along the alveolar spaces.
24 Q "Papillary," meaning like maybe a star shape?
25 A Not really.
25
1 Q Describe it in lay terms.
2 A Okay. Papillary is like a polyp. It has a
3 polypoid architectural appearance, and it has a central
4 core that has stroma or fibrovascular tissue in the core.
5 Q What's a polyp?
6 A A polyp is an outgrowth on outgrowth of tissue.
7 Can be benign or malignant.
8 Q What's the shape of a polyp?
9 A No, it's somewhat knob-shaped.
10 Q Okay. Let's go to your first choice.
11 Describe what that looks like in lay terms.
12 A Bronchial alveolar carcinoma grows usually in a
13 single file or -- a linear fashion around the alveolar
14 tissue. The sacs of the lung as if the -- as if the lung
15 were a scaffold or a template, and so it grows along this
16 in and kind of insinuates along the alveolar tissue.
17 Q What's it look like? Describe it. What shape
18 is it?
19 A It has the shape really of lung.
20 Q What shape does lung have?
21 A Lung is somewhat honeycombed looking. Looks
22 like a honeycomb.
23 Q How long did you look -- how long did you spend
24 looking at the slides before you came up with Opinion
25 Number 1?
26
1 A About 5 minutes.
2 Q 15 slides in 5 minutes?
3 A Right.
4 Q So that's 20 seconds apiece.
5 Is that about right?
6 A Could be, yes.
7 Q Okay.

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8 Were any one of them more engaging, interesting
9 than any other one?
10 A Well, not all 15 of the slides were lung
11 tissue. Probably the majority of them were the lymph
12 nodes, and so those went a lot quicker. It's really the
13 lung tissue that was the most important.
14 Q Why did --
15 A The lung tumor itself.
16 Q Why did lymph nodes go quicker?
17 A Well, because either they did or didn't have
18 metastatic tumor in them, and that goes fairly quickly.
19 Q Well, how much -- how many of the slides of the
20 lung did you have?
21 A There were probably around six slides.
22 Q How much time did you spend looking at those
23 six slides?
24 A Well, you asked me for my initial impression
25 was about five minutes, but I probably spent a total of
27
1 15 minutes looking at those slides.
2 Q Let's stay with initial impression. Initial
3 impression get rid of the lymph node slides.
4 How long did you spend with those five slides?
5 A Probably about four minutes.
6 Q Four minutes.
7 A For the initial impression.
8 Q You want to do the math on that one for me?
9 A Four slides in five minutes? Five slides --
10 Q Five slides in four minutes.
11 A Okay.
12 Q Five slides in 260 seconds?
13 A Less than a minute a slide.
14 Q Oh, for sure. That's self-explanatory, I
15 guess.
16 So you told him after five minutes what you
17 thought.
18 A Yes.
19 Q He then gave you a path report to look at?
20 A No. I think initially I was making statements
21 as I was ongoing looking at the slides, and I would kind of
22 discuss, "Okay, I have a lymph node, and this is probably a
23 resection margin"; and now we've got the lung tumor, and
24 this is adenocarcinoma. It has a bronchial pattern, so I'm
25 kind of ongoing discussing that with him.
28
1 Q Well, which --
2 A While I'm looking at my scope, he's in back of
3 me.
4 Q I apologize for interrupting you again.
5 Had you looked at the slides?
6 A I don't know.
7 Q Did he tell you he looked at the slides?
8 A I don't remember.
9 Q Did he tell you he understood what you were
10 talking about?
11 A He seemed to.
12 Q Well, that's not really an answer.
13 Did he tell you he understood the lingo?
14 A No.
15 Q How did he seem to?
16 A Because he could repeat after my certain
17 phrases. He used pathology terms --
18 Q Uh-huh.

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A -- asking me questions about, you know, bronchioalveolar carcinoma, why I thought it was that. And subsequent to that, he would show me after he did show me the report, asked me questions of why I would not feel this was papillary carcinoma versus a bronchioalveolar carcinoma.
Q Okay. So he's standing behind you. You got

29

your eye to the microscope. And he's asking you or discussing with you your findings and a tone of voice and in a way that leads you to believe that he understands what he's talking about.
A Yes.
Q When did the 5 minutes end in relation to the 20 minutes? Was it exactly 15 minutes before, or did you take a break, have a cup of coffee --
A No.
Q -- shoot the breeze and then go back and take a second look?
A No, this was ongoing. Continuous.
Q Then where's the demarcation between the 5 minutes and the 20 minutes?
A You asked me what -- when did I make my initial impression, and that was after 5 minutes.
Q So you kept your eye to the piece, and then you went over the stuff again or three times as much time?
A Right.
Q And confirmed what you already thought?
A Yes.
Q Which was?
A That this was a bronchioalveolar carcinoma.
Q Okay.
So now, how long was the discussion ongoing

30

while you were watching, looking?
A On my part. Because I have a tendency to talk as I'm looking at the slides just kind of letting them know that I am looking at the slides that --
Q What about his part?
A He would periodically maybe say something. Well, did you -- what did you see, or does the lymph node -- because I could comment, "Well, there's tumor in the lymph node. Well, does it look the same." He might have said something like that. We would have that kind of ongoing. He would want to know what I'm looking at, but that's all.
Q 20 minutes is over.
Now what happened?
A Then he presented me with -- or I asked for the report to see what it was diagnosed as.
Q The two of you discuss the report?
A Yes.
Q Did he have input into the discussion?
A He would ask again, I believe there was some conversation concerning why I favored bronchioalveolar carcinoma over papillary.
Q The answer -- answer?
A Excuse me?
Q Answer?

31

A And my answer?
Q Yes.
A That I didn't believe this had a papillary-type

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4 architecture? The structure since that had -- did not have
5 the central cores of fibrovascular tissue with tumor
6 surrounding those that would determine a papillary
7 carcinoma.
8 Q What was the core?
9 A Steven Geller.
10 Q Do you know that person?
11 A I don't know him personally.
12 Q Do you know of him?
13 A Yes.
14 Q What do you know of him?
15 A He's the chief at Cedars Sinai. He's a very
16 good pathologist.
17 Q How many pathologists are at Cedars?
18 A Oh, I don't know. 16.
19 Q 1-6?
20 A Some -- at least 16 pathologists.
21 Q Okay.
22 Well, that's sort of a strange number to be
23 using as an approximate.
24 Where does the 16 come from?
25 A I imagine they have twice as many as we do.
32
1 Q Got it.
2 And where do you stand on the hierarchy of the
3 8?
4 A I'm the president of the corporation.
5 Q You contract out to the hospital?
6 A Yes.
7 Q What's the name of the corporation?
8 A Orange County Pathology Medical Group.
9 Q How many hospitals?
10 A We do -- we service both St. Joseph's Hospital
11 and CHOC.
12 Q Okay.
13 A Children's Hospital of Orange.
14 Q Do all eight of you go to both places?
15 A Yes.
16 Q How is it determined who goes where?
17 A There's a rotation.
18 Q No one spends more time at one place than
19 another?
20 A No.
21 Q That's a true statement?
22 A Yes.
23 Q Okay.
24 How long have you been associated with this
25 company?
33
1 A Seven years.
2 Q Are you telling me that you spend half of your
3 time at CHOC?
4 A We really are -- our base is out of
5 St. Joseph's Hospital. Our offices are at St. Joseph, but
6 we do the pathology. We have shared services with CHOC so
7 we look at their pathology.
8 Q CHOC is Children's Hospital?
9 A Yes.
10 Q Does 50 percent of your time, not
11 administrative time now, but 50 percent of your time as a
12 pathologist involve Children's Hospital?
13 A No.
14 Q What percentage?

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15 A Oh, probably 15, 20 percent.
16 Q Didn't you tell me a little while ago that you
17 spend equal -- equal amount of time in both? Didn't I hear
18 that?
19 A I may have misunderstood you. We all spend an
20 equal amount of time rotating on whatever services that
21 there are, not that we each spend an equal amount of time
22 at St. Joseph's and CHOC.
23 Q What services are there?
24 A There's anatomic services primarily. We are
25 also -- we've signed clinical services, but primarily it's
34
1 anatomic services --
2 Q What is anatomic services?
3 A That would be the surgical services, which
4 would be what we call -- we refer to as grossing. That's
5 at the time of surgery, so we'll rotate on grossing either
6 for the hospital or at the outpatient pavilion service, and
7 we rotate reading out our own cases which would be the
8 following day on either one of those services. We rotate
9 on cytology, hematology.
10 Q What's clinical?
11 A Clinical pathologist involves the laboratory.
12 So there are various sectors in the laboratory. Blood
13 bank, the donor center, microbiology, chemistry,
14 hematology.
15 Q How long was Chris at your office the first
16 day?
17 A Close to an hour.
18 Q Okay.
19 So now you've looked at the slides 20 minutes.
20 You've looked at the report.
21 You spend the next, what, 40 minutes talking
22 about the report?
23 A Yes.
24 Q How much of that was you?
25 A Oh, probably -- probably the majority.
35
1 Probably 30 minutes.
2 Q 30 of 40?
3 A Yes.
4 Q What did he have to say?
5 A Asking questions about my review and how I came
6 up with the determination of the cell type and some
7 discussion on perhaps where there are some articles that
8 would be of interest for me.
9 Q Such as?
10 A Articles on bronchioalveolar carcinoma.
11 Q He suggested that to you?
12 A Yes.
13 Q Is he a doctor?
14 A No.
15 Q How do you know that?
16 A Well, he -- he doesn't have an M.D. after his
17 name.
18 Q Okay.
19 How many articles did he suggest to you?
20 A He didn't. No specific number.
21 Q Well, what were the names of the articles he
22 suggested to you?
23 A He didn't suggest --
24 MS. TANG: I'm sorry. Objection.
25 THE WITNESS: He didn't suggest any names at that

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point. He just said, "Would you be interested in receiving some articles," and I said "yes."
BY MR. PIUZE:
Q And you did?
A Yes.
Q How many?
A Oh, there were probably about 15 or 20 articles.
Q Chosen by lawyers for Philip Morris?
A I don't know.
Q Sent to you by Chris from Shook Hardy?
A Yes.
Q Shook Hardy represents Philip Morris; right?
A Yes.
Q He told you that, didn't he?
A Excuse me?
Q He told you that, didn't he?
A Yes.
Q So what are the names of the articles?
A Some of them are on this list. You want me to read through some of these?
Q No.
Why don't you give me the list? So your answer begs the next question: If some are on the list, where are the rest?
37
A No, the rest of the articles on that list are articles that I've selected.
Q Are all of articles that he decided you should have on what I just marked as Exhibit 2?
A No, they didn't. No, they're not.
(Whereupon, the document referred to was marked Plaintiff's Exhibit 2 for identification, a copy of which is attached hereto.)
BY MR. PIUZE:
Q How did you determine which ones to put on Exhibit 2 and which ones to leave off?
A These are ones that I read. The others, I did not read.
Q How did you determine which ones to read and which ones not to read?
A They had no pertinence to my expertise.
Q I'd like to know the ones that you decided not to read.
A Okay.
Q Go ahead.
A You want the names or the reasons why? I don't have the names here.
Q Why not?
A I didn't bring those with me.
38
Q Why not?
A I didn't read them.
Q Yeah, but they're part of your file of yours, aren't they?
A Yes.
Q You do have a file, don't you?
A Yes.
Q Where's your file?
A It's at work.
Q Why?

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A I only brought the articles that I read.
Q Well, here's the thing. We asked you to bring your file with you.
Did you know that?
A Yes.
Q So why didn't you do it?
A Well, these are -- there are a lot of things in the file, in my files, but these articles I didn't read and have no intention of reading.
Q Yeah, but I know. But that's the point. We asked you to bring your file.
A Yes.
Q Why didn't you do it?
MS. TANG: Objection. Harassing the witness.
THE WITNESS: I -- I really didn't think that it was

39

pertinent.
BY MR. PIUZE:
Q Well, it isn't for you to think and decide. It's for me as the lawyer to think and decide. If I had cancer and a path slide, I sure wouldn't do it myself. I'd go to a doctor.
So what haven't you brought with you?
A There were articles concerning "anka" genes and articles epidemiology that I really didn't find pertinent.
Q Now, we're back --
A To my expertise.
Q Now we're back to what Chris sent you.
A Yes.
Q What else didn't you bring from your file besides the articles that Chris sent that you didn't think too much about?
A Nothing.
Q For sure, nothing?
A Nothing.
Q You sure about that?
A Yes.
Q Okay.
How many of Chris's articles are on Number 2 here?
A In a second, I can tell you exactly. And you

40

again asked for the number that -- that he did not supply me? Is that --
Q No, I actually asked for which ones he did supply you.
A Okay.
Q But you can give it to me either way. It doesn't matter.
A Okay. 8. 8 of these that he did not.
Q Out of how many?
A And there are 26.
Q Okay.
We've got 16 there from him; right?
A Yes.
Q 8 from you?
A Yes.
Q How many of his are back at the office?
A There are probably about 6 or 8.
Q How do you draw the line on Exhibit 2 between yours and his?
A I don't have a line.
Q They're not -- they are interspersed?

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22 A They are interspersed; right.
23 Q Why don't I ask you to do me a favor? Just go
24 down each one of those articles and put a number before
25 each one, and you can tell me which numbers you decided to
41
1 include.
2 A Okay. (Witness complies.)
3 It's -- did you want me to the detail these for
4 the record?
5 Q No, just the numbers.
6 A Number 6, 7, 10, 13, 25, 26.
7 Q Are the articles that you decided you should
8 read and make reference to --
9 A Right.
10 Q -- on Exhibit 2?
11 A Yes.
12 Q Okay.
13 Let's go back to your meeting at your office
14 path slides, wherever they came from, Chris from
15 San Francisco. One hour has gone past.
16 A Uh-huh.
17 Q At the end of an hour, your opinion about what
18 was seen on the slides was what?
19 A That this was a bronchioalveolar carcinoma.
20 Q Did you tell me earlier that you've changed
21 your initial impression?
22 A Yes.
23 Q What have you changed it to?
24 A I believe this is a peripheral adenocarcinoma
25 with predominant alveolar pattern.
42
1 Q When did you -- give me a date.
2 Do you remember it was such and such a day at
3 such and such a time? You were in traffic, and you said,
4 "Eureka"; right?
5 A Yes.
6 Q And Chris held the steering wheel while you
7 said it?
8 A No, that's not correct.
9 Q Any?
10 A No. After reviewing some of the literature, I
11 revised that initial diagnosis. Probably about two weeks
12 later, after our meeting.
13 Q The meeting, and you had said that you would
14 like to get some articles.
15 A Yes.
16 Q Okay.
17 Had he, Chris, offered anything else to you?
18 A No.
19 Q Had you asked for anything else?
20 A No.
21 Q How long until the articles arrived?
22 A Probably three days.
23 Q How thick are those -- were those articles?
24 A It was a notebook binder that was probably four
25 inches thick.
43
1 Q Okay.
2 Literally, there was four inches of paper
3 inside the notebook binder?
4 A Yes.
5 Q And we're talking about someplace in the
6 vicinity of two dozen articles?

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7 A Yes.
8 Q Okay.
9 When did you read them, if at all?
10 A Over the next few weeks.
11 Q What else occurred, as far as this case is
12 concerned, during those few weeks while you read those
13 articles?
14 A Nothing that I know of.
15 Q Phone calls? Correspondence?
16 A No.
17 Q Offers of assistance?
18 A No.
19 Q None of the above?
20 A No.
21 Q Okay.
22 How did you determine which articles you
23 shouldn't -- should not read?
24 A Those articles that really didn't pertain
25 directly to pathology and histologic type of tumors because
44
1 my primary intent was to determine specifically what
2 subtype of adenocarcinoma this tumor was. So those
3 articles that dealt with epidemiology or mutational changes
4 in carcinoma or immunoperoxidase staining of tumors. None
5 of that appeared that it would have any relevance to what I
6 was going to try to do.
7 Q What's immunology?
8 A Immunology?
9 Q Is that what you said?
10 A immunoperoxidase staining.
11 Q Okay. I --
12 A A special immune -- immunology type of staining
13 that you can perform on tumors to differentiate one tumor
14 from another.
15 Q I made a mistake. I asked the wrong question.
16 What's epidemiology?
17 A Oh, the study of causes or relationships to
18 certain diseases.
19 Q And he sent you articles that dealt with the
20 relationship of certain diseases to what?
21 A Lung cancer.
22 Q You hadn't asked for that?
23 A No.
24 Q How am I going to know what he sent you?
25 A You -- well, I could give you that when I get
45
1 back to the office.
2 Q How far's your office from here?
3 A It's about 10, 15 minutes away.
4 Q What if you run?
5 A I'm not in that good a shape.
6 Q Okay.
7 Is there someone at the office that you could
8 call who could fax that information over here?
9 A No.
10 Q Keeping in mind our next meeting will be in
11 Los Angeles now. I usually don't make house calls.
12 A No, I realize that.
13 Q Good for you. It's very rare.
14 So why didn't you want to know about
15 epidemiology?
16 A That's not my area of expertise.
17 Q Did you ever ask anyone why epidemiological --

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18 say the word.
19 A Epidemiology.
20 Q Well, no. Epidemiological -- say that word.
21 A Epidemiological.
22 Q -- articles were sent to you?
23 A No.
24 Q Do you care?
25 A No.
46
1 Q Did you read all of the remaining articles
2 before you tossed yours into the mix?
3 A No.
4 Q At the end of the couple of weeks when you
5 changed your opinion, had you read all of the eight
6 articles that you've mentioned to me from Exhibit 2?
7 A The other six articles that I -- that I added?
8 Q It was six that you added?
9 A Yes. Yes.
10 Q And the answer's "yes"?
11 A Yes, uh-huh.
12 Q Okay.
13 So when you had decided what you decided, did
14 you await further developments, or did you do something in
15 order to tell someone that you changed your mind?
16 A No, I waited.
17 Q And when you waited, what ultimately occurred?
18 A There was another meeting.
19 Q How did that happen?
20 A There was an appointment made that there would
21 be a conference to determine -- to go over what my final
22 review was and to go over my findings.
23 Q Who called?
24 A I don't remember.
25 Q Who'd you talk to?
47
1 A I don't remember.
2 Q Was it a lawyer?
3 A I don't remember.
4 Q Where was a meeting?
5 A At the hospital.
6 Q Which hospital?
7 A St. Joseph's Hospital.
8 Q Do you have dates for any of these meetings?
9 A Yes.
10 Q What?
11 A I don't have them here.
12 Q Well, you see when you told me that the only
13 thing you didn't bring was those articles.
14 A No.
15 Q I didn't believe you.
16 A I told you before I didn't bring the yellow
17 pieces of paper.
18 Q Post-its?
19 A Post-its.
20 Q So your -- your appointment dates are put on
21 post-its?
22 A Yes.
23 Q How long you been doing that?
24 A Oh --
25 MS. TANG: Objection. Irrelevant.
48
1 BY MR. PIUZE:
2 Q How long have you been doing that?

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MS. TANG: Same objection.
THE WITNESS: For this case?
MR. PIUZE: No.
THE WITNESS: About four weeks.
BY MR. PIUZE:
Q Not for this case.
A Uh-huh.
Q How long have you been in the habit of writing down appointments on post-its if you've ever been in that habit before this case?
A Periodically.
Q What does that mean?
A It means periodically I write down appointments on yellow post-its.
Q Why?
A It's to jog my memory.
Q No.
Why post-its as opposed to a more pertinent type of recordation?
A In the expectation that I will get to that when I'm making up a letter to send to somebody to document when the meetings were.
Q Why would you --

49

A I hadn't gotten around to that yet.
Q Why do -- would you send a letter to document when meetings are?
A Yes.
Q Were you talking about a bill?
A Yes.
Q You haven't gotten around to that.
When is that going to be?
A Soon.
Q Has anyone told you that you should or should not do that before a certain time frame?
A No. No.
Q Do you have some sort of a calendar over at your office where I keep appointments?
A Yes.
Q And are these meetings listed in your calendar in your appointment book?
A Yes, they are. Yes.
Q Why don't you give me your best approximation about meeting Number 1. Put your best approximate date on it.
A About two months ago.
Q Which is what?
A Would be the middle of January.
Q This is the Chris meeting?

50

A Yes.
Q Second meeting, give me your best approximation of when that occurred?
A Probably a month later. So it would be maybe or -- or maybe the middle -- early part of February.
Q Okay.
I thought you said earlier that, whatever it was, you said didn't sound like a month between your meeting with Chris and the second meeting.
A It may have been sooner. I -- I don't know. It was approximately three to four weeks. I don't remember.
Q Okay.

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So you think at the beginning of February someone set up a meeting at the hospital?
A Right.
Q Why the hospital as opposed to your office?
A I think we're confused. There were three meetings. There was the initial meeting with Chris where I went over the slides. There was a second meeting where there were three individuals there.
Q Where?
A From the -- in my office again.
Q Let's stay there.
A Okay.

Q I'm just following your lead so far.
A Okay.
Q Second meeting's at your office?
A Right.
Q Still at the middle -- beginning of February, approximately?
A About then.
Q Who's there?
A And those were the three representatives of Mitzi Dobson, Chris Johnson and Angel.
Q Tang?
A Tang.
Q So we're talking about the law firms of Bonne, Bridges, Shook, Hardy and Bacon and Arnold and Porter.
A Yes.
Q Come to your office?
A Yes.
Q With what?
A I believe they brought the slides again. Because that -- as I remember, I saw the slides twice, and they brought those again.
Q Why were the slides -- why didn't you ask to keep the slides in your possession?
A It really -- I imagine that they wanted those back, and I really don't need them in my possession.

Q I'm sure you didn't imagine it. I bet you he said can I have the slides; right?
MS. TANG: Objection.
BY MR. PIUZE:
Q Is that the way it worked?
A I -- I didn't require to have the slides on my possession.
Q I know. That's not what I asked, though. Did Chris ask to take the slides with him?
A No.
Q Okay. Did you ask Chris to take the slides with him?
A No.
Q He just did?
A He just did.
Q Without any discussion?
A That's correct.
Q So, for instance, "Hey, Doctor, do you think maybe in the next couple of weeks in your off hours, you may want to look at these again because you may change your mind? You may want a second look?" Nothing like that was said?
A No.
Q Who looked at the slides in between your

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25 meeting Number 1 with Chris and meeting Number 2 with
53
1 Chris?
2 MS. TANG: Calls for speculation. Objection.
3 THE WITNESS: No.
4 BY MR. PIUZE:
5 Q It only calls for speculation if he didn't tell
6 you.
7 A No, I don't.
8 Q He didn't tell you?
9 A No.
10 Q Where did the slides go for those two to three
11 weeks?
12 MS. TANG: Objection. Speculation.
13 BY MR. PIUZE:
14 Q Did he tell you that?
15 A No.
16 Q So how long is meeting Number 2?
17 A Probably 45 minutes.
18 Q Who did the talking on behalf of the lawyers,
19 if anyone?
20 A I -- I don't know that any one particular
21 person dominated that meeting. I think it was just another
22 meeting concerning going over some of the -- the case. I
23 was given at that point, as I remember, some of the
24 clinical information on -- on the patient.
25 Q Is that the first time you'd heard clinical
54
1 information?
2 A Yes.
3 Q Did you ask for that?
4 A No.
5 Q Let's go to the beginning of the meeting.
6 Ready?
7 Who's speaking for the lawyers?
8 MS. TANG: Beginning of the second meeting?
9 MR. PIUZE: Sure.
10 BY MR. PIUZE:
11 Q Who's speaking for the lawyers?
12 MS. TANG: That assumes that the lawyers had one
13 representative as a speaker.
14 THE WITNESS: I -- I don't remember. But there --
15 again, I don't remember anybody dominating that meeting
16 or -- or making it apparent that they were in charge of the
17 meeting.
18 BY MR. PIUZE:
19 Q Okay.
20 Well, I'm just sort of visualizing that you met
21 two of them before.
22 You met two of them before; right?
23 A That's correct.
24 Q One of them you'd met several times before?
25 A Right.
55
1 Q What's Mitzi's last name?
2 A Dobson.
3 Q Did Miss Dobson --
4 A What did she say?
5 A I don't remember. I -- I don't think there was
6 anything -- I really don't remember what she said.
7 Q You know what the word substantive is?
8 A Yes.
9 Q Did she say anything substantive?

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10 A Not that I remember.
11 Q Other than, "Hi, how you doing? How are your
12 kids? nice day. How's life?"
13 She really didn't say anything that you recall;
14 right?
15 A Not -- not specifically, no.
16 Q Has she, Mitzi Dobson, Bonne, Bridges, this
17 office, Orange County, has she said anything substantive
18 ever about this case that you know?
19 A No.
20 Q Has Chris?
21 A Yes.
22 Q Has Angel Tang?
23 A Not really, no. Not that I remember.
24 Q Well, we'll keep this transcript secret until
25 after the bonuses are passed out.
56
1 Who's this lady over here?
2 A Mary Ann?
3 Q Have you ever seen her before today?
4 A Yes. She was at the third meeting.
5 Q Okay. Well, let's go back to meeting Number 2.
6 Did you look at the slides during meeting
7 Number 2?
8 A Yes.
9 Q Why?
10 A They were given to me.
11 Q So?
12 A Well, you give a pathologist a slide, and
13 they're going to do what they know. They look at them.
14 Q Okay.
15 Did you not ask to see the slides during
16 meeting Number 2?
17 A No. No.
18 Q Chris gave you the slides?
19 A As I remember, yes.
20 Q You interpreted that as a request, that you
21 look at the slides?
22 A Perhaps.
23 Q Well, I'm looking for your best -- it's you.
24 It's your mind. Only you know what's in there.
25 A I'm sure I wanted to look at the slides again.
57
1 I hadn't seen them for several weeks.
2 Q You already said you didn't say them out loud.
3 If Chris isn't the mind reader -- and I'll bet
4 you he isn't -- he didn't know that; right?
5 A Uh-huh.
6 Q Is that a "yes"?
7 A Yes.
8 Q Okay.
9 So he asked you. He gave you the slides, and
10 I'm simply asking you: Did you interpret that as his
11 request that you look at the slides?
12 A No.
13 Q Fine.
14 And at the end of the day, he left the slides
15 with you?
16 A No.
17 Q Did you ask to have the slides left with you?
18 A No.
19 Q How much time did you spend looking at the
20 slides on day Number 2?

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21 A Probably another 10 -- 10 minutes.
22 Q What were you looking for?
23 A To review the -- histologic appearance again.
24 Q What's histologic? What's histology?
25 A Histology is the study of -- of tissue. It's
58
1 the way we process study of -- and the processing of the
2 tissue for review on slides.
3 Q What do you mean the way you process the
4 review?
5 A We take tissue from a specimen, and it goes
6 through a number of processes in order that it can be
7 placed on a slide, so we can look at that under the
8 microscope. And the procedure of doing that is histology,
9 what we refer to as histology. Histology can also be
10 referred to as the study of tissue.
11 Q 45 minute, 10 minutes looking at the slides.
12 Where did that 10 minutes occur?
13 A Shortly after the beginning of our meeting.
14 Q Okay.
15 Aside from pleasantries, was there anything
16 substantive before you started looking at the slides in
17 meeting Number 2?
18 A No.
19 Q That was your first order of business?
20 A Right. As I remember.
21 Q Okay.
22 So you looked at the slides, talking to Chris
23 over your shoulder?
24 A They're in back of me.
25 Q Were you talking to Chris over your shoulder?
59
1 A Yes.
2 Q What'd you have to say?
3 A Again, just reviewing its appearance, the --
4 the histology of the tumor, and there was an issue raised
5 about the focus of fibrosis, if I saw that.
6 Q He raised that issue.
7 A I don't know who rose it -- who brought that
8 issue up.
9 Q Except you know it wasn't you?
10 A That's right.
11 Q Okay.
12 So one of the lawyers was asking you a really
13 technical question about, are you seeing --
14 A Fibrosis.
15 Q Had you seen fibrosis?
16 A On the initial review of it, I hadn't paid that
17 close attention to it.
18 Q Let me ask you a question: How long did it
19 take you to get really good at reading pathology slides?
20 A Probably about --
21 MS. TANG: Objection. What do you mean by "really
22 good"?
23 THE WITNESS: Probably about five years, five to ten
24 years.
25 / / / /
60
1 BY MR. PIUZE:
2 Q What do I mean by "really good"?
3 A To be able to look under low power probably is
4 what you're referring to, look at tissue under low power
5 and have a pretty good idea of whether to give a -- or at

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6 least derive a good differential diagnosis under low power.
7 Q And that's what you were doing at both of these
8 meetings that we talked about so far?
9 A Well, I did both under low power and high
10 power, but, yes.
11 Q You're board certified?
12 A Yes.
13 Q When did you get board certified?
14 A 1981.
15 Q How long have you been looking at slides before
16 you became board certified?
17 A Five years.
18 Q And you figure it was another three years after
19 you were board certified before you were really good?
20 A I would think so, yes.
21 Q Let's say that maybe --
22 A It makes --
23 Q -- it takes longer even?
24 A It takes experience.
25 Q All right.
61
1 A No, I would say by that time I'd have enough
2 experience.
3 Q You're still learning, aren't you?
4 A Absolutely.
5 Q Right.
6 So anyway, having pointed out to me earlier in
7 this deposition that Chris doesn't have an M.D. after his
8 name, and so you figured he wasn't a doctor.
9 And assuming you're right about both of those
10 things, did you wonder where he was getting the pin put to
11 be asking you about fibrosis and its cells?
12 A I had made an assumption that someone else may
13 have reviewed these slides.
14 Q That wasn't much of a stretch, was it, Doctor?
15 A No.
16 Q Okay.
17 Did you ask him that?
18 A No.
19 Q Have you ever asked him that?
20 A No.
21 Q Is there any reason why you haven't asked him
22 that?
23 A I'm not interested.
24 Q What was the answer to his question?
25 A Yes, there was fibrosis.
62
1 Q Had you noticed it before?
2 A I had seen it, but I hadn't really taken that
3 into consideration. It didn't impact my diagnosis on the
4 initial evaluation.
5 MR. PIUZE: I need that question and the answer,
6 please.
7 (The record was read.)
8 BY MR. PIUZE:
9 Q So it was a terrible question, and it deserved
10 the answer.
11 Obviously, you'd seen it because you looked
12 through that microscope for 20 minutes with those slides.
13 Had you consciously thought in your earlier
14 review that there was fibrosis?
15 A No.
16 Q The first time that entered your consciousness

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was when Chris, the lawyer, not the doctor, behind you mentioned fibrosis?
A Yes.
Q And you said, "Ah-hah, there is -- there it is."
A Yes.
Q In addition to mentioning things that maybe you should consider seeing, did he ever give you any kind of a cue about things you shouldn't be seeing?

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A No.
Q To put it differently.
Do you know what a leading question is?
A Yes.
Q What's a leading question?
A When they really expect -- when someone expects an answer and is trying to bring you to that conclusion by leading you to that conclusion with just their question.
Q Someone told you that I asked leading questions today; right?
A No.
Q Okay.
Well, a leading question is a question which, to me, suggests its own answer. So an example might be, "Nice day, isn't it?" That's a leading question. "Yeah, it's a nice day."
With me so far?
A Yes.
Q Did Chris ask you any kind of negative leading questions such as -- don't forget. You've got your eye to the eyepiece. They're behind you. You don't know what's going on behind you. Such as ,"You don't see, 'X,' 'Y,' 'Z.'" "You don't see, 'A,' 'B,' 'C', do you?"
Were there any questions like that?
A No.

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Q Pretty sure?
A Yes.
Q Okay.
Besides fibrosis, did he suggest through his question that there may be something else present?
A No. The way it came up was, "With the fibrosis in mind, does your diagnosis of bronchioalveolar carcinoma still stand?"
Q And what was the answer to that?
A And so that became a discussion. I still maintain at that sitting, that, yes, that you could see fibrosis with bronchioalveolar carcinoma.
Q You maintained?
A Yes.
Q And so I guess that means you no longer maintain?
A If -- it becomes a more complex issue. Yes and no.
Q You no longer holding them to it?
A I believe that this is a complex area. I believe that bronchioalveolar may have areas of fibrosis, but the -- by strict definitions, that some people like to place on bronchioalveolar carcinoma, then by strict categorization, this may not fit into a pure bronchioalveolar carcinoma with that focus of fibrosis

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that's present.

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Q So from what you originally thought, you backed
off at least twice, in two different notches; right?
A Not -- I modified the diagnosis, my original
diagnosis.
Q Twice.
A Once.
Q Tell me what you modified it from.
A From bronchioalveolar carcinoma.
Q To?
A An adenocarcinoma with predominant
bronchioalveolar pattern.
Q That's the only change?
A Yes.
Q When did you come to your first conclusion?
A On the initial review of the slides.
Q When did you come to your second conclusion?
A After the second meeting and reviewing the --
the literature.
Q Which literature?
A Primarily, the -- the fascicle and the W-4O
classification and articles concerning the presence or
absence of fibrosis with bronchioalveolar carcinoma.
Q Who chose what you read this time?
A I did.

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Q Solely?
A Yes.
Q No suggestions from Chris about where you may
want to be looking at strict definitions, not so strict
definitions?
A No.
Q Okay. So back to meeting Number 2.
Ready?
A (Witness nods head.)
Q First 10 minutes of 45, roughly. You looking
at slides.
A While you're looking at slides, Chris says
something about, "You see that little fibrosis down there,"
remember?
A Uh-huh.
Q "Yes"?
A Yes.
Q Okay.
When that was over, those 10 minutes were over,
how did the four of you -- let me reconfirm.
There were only four people in the room?
A That's correct.
Q Three lawyers and you?
A I don't think you could fit more people in
there.

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Q Three lawyers and you?
A Yes.
Q What did the four of you discuss during the
next approximate 30 minutes?
A I think there was a discussion on -- at that
point there may have been a discussion concerning the
different kinds of adenocarcinomas and their relationship
to their -- the his logic type again and possibly some
discussion on tobacco-induced carcinoma and where those are
likely to present.
And the difference between bronchiogenic
carcinomas and peripheral carcinomas. We may have had some

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13 discussion concerning that. I don't remember there being
14 much discussion about the clinical presentation of the
15 patient. It was at that meeting that I did receive the --
16 the clinical reports on the patient, a lot of materials on
17 the patient's clinical presentation.
18 Q That, you read during the meeting?
19 A No. No.
20 Q Part of which you read during the meeting?
21 A No. No.
22 Q Some of which you skimmed during the meeting?
23 A No.
24 Q None of which you looked at during the meeting?
25 A That's correct.
68
1 Q So as far as Mr. Boeken's clinical records are
2 concerned, you never saw them until after meeting Number 2?
3 A Right.
4 Q Besides the path report and the slides that
5 you've already told us about, had you seen any other
6 materials concerning Mr. Boeken individually by the end of
7 meeting Number 2?
8 A No. No.
9 Q Okay.
10 Now --
11 MS. TANG: Is this a good time for a break?
12 MR. PIUZE: No.
13 MS. TANG: Do you need a break? If you need a
14 break, take one.
15 THE WITNESS: It's fine with me.
16 MR. PIUZE: Doctor, that could be considered a
17 leading question, too. "Do you need a break?"
18 "Sure."
19 MS. TANG: No, not at all.
20 MR. PIUZE: Would you like a break, Miss Tang?
21 MS. TANG: We've been going for an hour. So I need
22 to use the rest room. So if it's not a good breaking
23 point --
24 MR. PIUZE: You can go use the rest room. Go ahead.
25 MS. TANG: No, that's okay. I'll just wait until we
69
1 break.
2 MR. PIUZE: Okay. I'll take that as a dare.
3 Miss Tang, I don't want to make you personally
4 uncomfortable. Why don't you go use the rest room?
5 MS. TANG: That mean we'll take a break?
6 MR. PIUZE: Well, I'm not going to ask questions in
7 your absence.
8 MS. TANG: Okay. Let's take a break. Thank you.
9 (A brief recess was taken.)
10 BY MR. PIUZE:
11 Q During the 30 minutes you talked about, I
12 think, four discrete subject matters, as I heard you tell
13 it, the third of which, I believe, contained the word
14 "tobacco."
15 What's tobacco got to do with anything?
16 A Tobacco is related to some lung cancers.
17 Q Not to Mr. Boeken's, though?
18 A I don't know.
19 Q Didn't Chris tell you?
20 A No.
21 Q Did he tell you what he thought?
22 A No.
23 Q Okay.

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24 How did tobacco get into the conversation,
25 though?
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1 A Well, because this came in to the epidemiology
2 of certain types of lung cancer.
3 Q I know, but you certainly didn't bring it into
4 the conversation?
5 A No.
6 Q That's a true statement, isn't it?
7 A I believe so.
8 Q Of course.
9 Because all you're interested in is telling
10 what you see on the slides; right?
11 A Right.
12 Q Let the chips fall where they may.
13 A That's right.
14 Q Exactly.
15 So which one of these three lawyers started
16 talking about tobacco in your presence, then?
17 A I don't remember. It -- it may have -- well
18 have been Chris.
19 Q Okay. Let's -- and so what did he have to say?
20 A I think we just -- it was a -- just a
21 discussion on the difference between bronchiogenic
22 carcinomas which are related to tobacco smoking and other
23 tumors of the lung peripheral tumors and their relationship
24 to tobacco.
25 Q So let's hear what he had to say on those
71
1 issues.
2 A I don't think he gave an opinion. I don't
3 think -- I think it was more, we discussed location of
4 tumors and types of tumors and their relationship to
5 tobacco.
6 Q I know. I heard that part. But if we discuss
7 it and it wasn't you, that leaves him. So I want to know
8 what he said.
9 A No. I -- I believe that I was more discussing
10 the fact of what I had been reading and incorporating that
11 into the relative risk of smoking and bronchiogenic tumors
12 and certainly small and differentiated carcinomas versus
13 those are -- that are peripheral carcinomas.
14 Q Even though that wasn't your area?
15 A Even though that wasn't my area.
16 Q So why were you reading stuff like that?
17 A It was in some of the articles that I had read.
18 Q But we're still at the point where you're still
19 saying now affirmatively it was Chris that brought tobacco
20 into the conversation.
21 A I believe so.
22 Q Okay.
23 So I want you to tell me what he said.
24 A I -- I don't know specifically. I don't
25 think -- there was nothing specific that he wrote up, but I
72
1 do believe that he wasn't one that may have initiated some
2 statement about the relationship of tobacco, you know, is
3 there a relationship of tobacco, or are you aware of the
4 relationship of tobacco with peripheral tumors? And then I
5 would just say what my understanding was of that.
6 Q Okay.
7 A And just kind of a free-floating discussion on
8 my part of the various differences, my understanding

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between the relative risks of smoking and various tumors in the lung.
Q He didn't ask you, quote, "Is there a relationship," close quotes, did he?
A Not that I remember, no.
Q It was closer to, quote, "Are you aware of the following?"
MS. TANG: Objection. Argumentative.
BY MR. PIUZE:
Q Close quote; correct?
A No, I don't remember it being that way either.
Q Tell me how you remember it being.
A I remember being more on my part kind of a free-fleeting discussion on, like I said, the relationship between bronchial carcinomas and the various adenocarcinomas that are not bronchiogenic or central in the lung.

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And my understanding trying to understand in my own mind what difference it would make of the cell typing in this case. Would it make any difference at all? And the reason for that is that generally, the -- the service pathologist or hospital-based pathologist is not concerned as much in sub, subtyping these adenocarcinomas as they are in differentiating nonsmall cell versus small cell and differentiated carcinomas because that's the primary definition that the clinicians want you to make. Or even differentiating with the nonsmall cell, the difference between squamous and adenocarcinoma for their treatment services. Otherwise, the subclass physician of adenocarcinomas never really becomes a major issue with us as a working pathology. It's not something that really impacts therapy, so it's not something that you're really expected to clinch down to the nth degree, and so a lot of times when we're referring cases, or we're looking at tumors, the predominant pattern, the first initial impression is oftentimes the diagnosis that you make. Once you've distinguished the difference between small cell versus a nonsmall cell carcinoma.
Q Well, which was this?
A This is a nonsmall cell carcinoma. It's an adenocarcinoma.
Q Okay. Tell me what small cell carcinomas are.

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What subtypes.
A Small cell carcinomas are derived from a particular cell in the lung or anywhere else in the body that's a neuroendocrine tumor, and they're very fast growing tumors. They're -- have a high turnover rate so they have a high myotatic activity usually associated with a lot of necrosis. They have a particular very specific appearance. They stain in a particular way, and they're, generally speaking, more central in location. There can be peripheral lesions, but they have a very distinctive appearance; and clinically, they're treated different than other tumors.
Q What were you just talking about just now?
A Small cell differentiated carcinomas.
Q Tell me the difference?
A Of the small cell differentiated carcinomas. It can take on various appearances. It can look like a classic form. Can -- there is a form that has been called an intermediate cell form. There can be a large cell form

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of small cell differentiated.
Sometimes if the appearance isn't classical, we can term those as a malignant endocrine carcinoma rather than neuroendocrine -- a malignant neuroendocrine carcinoma versus a small cell undifferentiated carcinoma.
Q What does Mr. Boeken have?

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A He has a nonsmall cell carcinoma.
Q You were just telling me all kinds of small cell carcinomas; right?
A Right.
Q Are there only two curtains, small cell and not small cell?
A Generally speaking, for the clinicians, for treatment purposes, those are the two main branches that they want to know. That's kind of algorithm that they look or expect us to come up with.
Q Okay.
So let's go to the second choice.
A There are a variety of -- of non- -- but carcinomas, the carcinoma, the primary ones, are squamous carcinoma.
Q Let me stop you for a second.
A Yes.
Q You started to say something, and then you didn't. It was just shorthand. There was nothing wrong with it, but for my record here, I just want to stop you so we can get it clear.
You've just told me about small cell carcinomas; true?
A Yes.
Q Okay.

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And now we're going on to what, what is the proper terminology non- --
A Nonsmall cell carcinoma.
Q Nonsmall cell carcinomas, yes?
A Yes.
Q Tell me what fits in that category, please.
A The -- the two main branches under that then, the two main categories are squamous carcinoma and adenocarcinoma. And under each one of those categories, again, there are a whole variety of different subtypes that tumors can take on. Under squamous, they can have an appearance of a typical squamous carcinoma, or they can look spindle shaped so they can look like a carcinoma. There's all different subtypes, that category. The adenocarcinoma even more heterogenous in its appearance.
Q Stop.
"Heterogenous" means, what?
A It can take on a number of different appearances. Multiple different appearances.
Q Can it mimic some of the ones you've already told us about?
A No, not generally. You can have mixed tumors that can have mixed squamous and adeno. You can even have tumors that have mixed small cell and nonsmall cell. So you can have tumors that can take on a variety of

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appearances, even from the nonsmall -- or from a small cell variety into a nonsmall cell. But generally speaking, no, when you're in a specific category, generally adenocarcinomas look like adenocarcinomas, but they are not

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metastatic. They may take on various forms in that subgrouping. And under the adenocarcinomas, there are a number of different times aciner.
A Aciner is a-c-i-n-e-r. Bronchial alveolar carcinoma. Papillary carcinoma. And a solid form of the adenocarcinoma.
Q What is adenocarcinoma mean?
A Adeno is -- is a term used for gland forming cells. So an adenocarcinoma is a malignant tumor that's attempting to simulate a gland of some sort whatever in their variety of different types of glands. So whatever, that tumor is trying to recapitulate the formation of the gland.
Q Tobacco is associated with closely with which?
A Certainly small cell undifferentiated carcinoma.
Q Tobacco is also associated with which?
A Adenocarcinoma.
Q Tobacco is not associated with which?
A I don't know that there's a type that has been proven definitely not to be associated. There -- there are

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some that have higher risks than others. The highest risk being small cell undifferentiated and squamous or the highest association and supposedly less association with adenocarcinoma. But I don't think there's, in the reverse flip side of the coin, been any tumor type that has definitely proven not to be associated.
Q Can you quantify the magnitude of the associations that you just mentioned?
A That's really not my -- my area of expertise.
Q So that's a "no"?
A That's correct.
Q Okay.
We're still on 30 minutes of a 45-minute meeting Number 2, following looking at the slides. I heard you earlier give four discreet areas that were discussed, and I think we just went through one of four.
What else was discussed?
A Actually, when you had asked me -- had we reviewed some of the patient's information, I do seem to remember pulling out some of -- or just thumbing through some of the clinical reports and possibly reviewing like the radiology or something like that, but there wasn't any major discussion on that.
Q Why'd you do that?
A Out of interest.

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Q Why?
A To see the correlation between the location of what I was seeing, the tumor on histologic slides and in the pathology report and what the radiology report showed.
Q And what did you find?
A That it correlated.
Q Was that a surprise?
A No.
Q Why look?
A Just to correlate.
Q There were two other areas that were discussed at that meeting, if I'm not mistake.
What else was discussed?
A I don't remember. I -- I don't remember that there was anything else discussed.

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Q Did you ask for anything else?
A No.
Q At the end of the meeting?
A No.
Q Were you asked to do anything else?
A No.
Q Did you think you were going to make the final cut at the end of the second meeting?
A Make the final cut?
MS. TANG: Objection. Vague and ambiguous.

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THE WITNESS: Could you explain that?
MR. PIUZE: Yes, sure.
Q You had already come to the conclusion that Chris was showing you slides, these slides, though, more than just you in the field of pathology. Did it occur to you that he was looking for the nicest opinion he could find amongst the people he would show the slides to?
A No.
Q Okay. That's what I meant by "the final cut." Do you follow me now?
A Yes.
Q Okay. As far as you were concerned, was everything that you had to do and say done and said by the end of meeting Number 2?
A Pretty much so.
Q Well, that can't really be true if you had this stack of clinical records; right?
A Yes. Well, I -- I knew that I would select out a limited number of those records to review because most of the chart would really have no relevance to what my expertise is. Most of it was clinical information, oncologic, radiation, oncology reports, that sort of thing.
Q You never read those?

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A I only looked at them briefly just to pick out reports that might have relevance to the pathology.
Q What have you read?
A Just the radiology report. I did pull out an oncology report. One of the oncology reports.
Q Why?
A To see what their -- if they had incorporated a histologic type and how they were basing their treatment.
Q Had they?
A No.
Q How were they basing their treatment?
A As a nonsmall cell undifferentiated carcinoma.
Q Okay. And why the radiology reports?
A Again, just to correlate what was seen at the time of the gross pathology review, the review initially of the appearance of the lung when it was seen by pathology versus what the radiology report showed.
Q Between meeting Number 1 and meeting Number 2, did you read all of those articles?
A Most of the articles that Chris had given me and not all of the -- certainly not all of the articles that I had pulled myself. It wasn't until after the second meeting.
Q Well, had you pulled them by that time?

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A Some of them, yes.
Q How much time had you spent between meeting Number 1 and 2?
A Well, in reading, probably three hours.
Q Well, I didn't limit it to reading. I don't know what else you might have done. That's for you to know.
A The two meetings, the -- the two separate hour meetings, hour, hour and 45-minute meetings and then three hours of reading.
Q Okay.
So what does that all add up to?
A That's close to five hours.
Q Yes, it is.
So as far as you were concerned, at the end of meeting Number 2, you were going to review the medical records; correct?
A Yes.
Q And do what else?
A Review more articles.
Q Was that your idea?
A Yes.
Q And do what else?
A That's it.
Q Why review more articles?

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A It disturbed me, the find -- the -- the subclassification of the bronchioalveolar carcinoma. Was it really a bronchioalveolar carcinoma? Was I missing something? Could it be a papillary carcinoma? And the finding of fibrosis, how do you relate that in the tumor? And what is the general consensus concerning those tumors and the classification?
Q Have you ever heard of Whitfield versus Roth?
A No.
MR. PIUZE: Okay.
Have you?
THE REPORTER: No.
MR. PIUZE: Zero for five. That's the case that says you can't stand up in and court ask, say, "The general consensus is this.
Q I talk to all my colleagues about it, and this is the general consensus, so keep that in mind, will you?
Will you?
A Uh-huh.
Q Okay.
A Sure.
Q When was meeting Number 3?
A That was approximately two -- two weeks ago, three weeks ago.
Q Where?

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A It was at the hospital.
Q Whose idea?
A It was the lawyer's idea.
Q Which?
A Probably Chris.
Q The reason you say "probably" is because he's the person that contacted you?
A Uh-huh, or his office, I believe.
Q Who?
A I don't know.
Q A lawyer?

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12 A I don't know.
13 Q Okay.
14 So two weeks ago, how long did that meeting
15 last?
16 A That lasted about an hour.
17 Q Had you finished all of your reading by that
18 time?
19 A Pretty much, yes.
20 Q And that means the articles and the medical
21 records?
22 A Yes. As much as I was going to review, uh-huh.
23 Q Had you looked at the slides again?
24 A No.
25 Q Where were the slides?
85
1 A I don't know.
2 Q At meeting Number 3, where were the slides?
3 A I don't know.
4 Q Were they there?
5 A No.
6 Q You sure?
7 A As far as I remember.
8 Q Well, you didn't look at them?
9 A I don't remember looking at them at that
10 meeting.
11 Q So I'm asking, do you know if they were there?
12 A No.
13 Q How had the slides presented in the past? Did
14 they come out of a lawyer's briefcase?
15 A Yes.
16 Q What were they kept in?
17 A In -- in a slide holder, a box.
18 Q How big?
19 A Oh, they're about five by four.
20 Q Inches?
21 A Yes.
22 Q What came out of the briefcase, if anything, on
23 meeting Number 3?
24 A Note pads.
25 Q More records?
86
1 A No.
2 Q More articles?
3 A No, not that I remember.
4 Q The lawyers never actually sent you articles
5 other than after the first meeting; correct?
6 A No, they did.
7 Q When?
8 A It was probably after the -- the second
9 meeting. There were some articles concerning -- it wasn't
10 specifically carcinoma, but in a sclerosing carcinoma, it
11 may have been articles trying to refer to a sclerosing
12 bronchioalveolar carcinoma; but it was more on the articles
13 were really more referring to interstitial kinds of
14 processes and -- and tumors associated with scarring.
15 Q Those articles listed on Exhibit Number 2?
16 A Yes, uh-huh.
17 Q How many?
18 A I believe there were two articles.
19 Q You didn't ask for them?
20 A No. Well, actually, Chris had -- had
21 mentioned, "Would you be interested in a couple of articles
22 on -- on sclerosing bronchioalveolar carcinomas," and, I

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23 said, "Yes."
24 Q Have you read them?
25 A Yes.
87
1 Q Was it interesting?
2 A No.
3 Q Did it add anything to your opinions previously
4 held?
5 A Those articles didn't, no.
6 Q Change your opinions previously held?
7 A No. No.
8 Q Modify your opinions previously held?
9 A No. Those weren't the articles that -- that
10 modified my diagnosis.
11 Q The articles that modified your diagnosis were
12 articles that you yourself found?
13 A Yes.
14 Q How would you like to be a consultant?
15 A Can you rephrase that --
16 Q If you found stuff that Philip Morris hasn't
17 found yet, maybe they'd be interested in hiring you as a
18 consultant.
19 What do you think?
20 MS. TANG: Objection.
21 THE WITNESS: I don't think that's necessary.
22 BY MR. PIUZE:
23 Q How come?
24 A I don't think they need my assistance in
25 finding articles.
88
1 Q I think you're right about the fact they don't
2 need your assistance in finding articles. So now, at the
3 third meeting, two articles came out.
4 Did anything else come out of the briefcases
5 for presentation to you?
6 A No, those articles didn't come out of the
7 briefcases. Those were sent in the mail prior to that
8 meeting.
9 Q Okay. Sorry. You already told me something
10 like that.
11 Did anything come out of the briefcases that
12 were given to you?
13 A Not that I remember.
14 Q Who was there?
15 A Everyone that's in this room currently.
16 Q And --
17 A And Mitzi Dobson.
18 Q So now we've got the same three lawyers from
19 Bonne, Bridges; Shook, Hardy; Arnold and Porter, and now we
20 have yet another person from Arnold and Porter?
21 A Yes.
22 Q And there -- I'm sorry.
23 A There was one other gentleman, whose name -- it
24 really alludes me. Curtis. Curtis Perry, yeah. From the
25 Shook, Hardy office.
89
1 Q That question just had two people there from
2 Arnold and Porter.
3 Were there two people from Arnold and Porter?
4 A No, just one.
5 Q Who?
6 A Angel Tang.
7 Q Three people from Shook, Hardy?

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8 A Yes.
9 Q Chris?
10 A Yes.
11 Q The lawyer, yes?
12 A Yes.
13 Q Who was the other man you just mentioned?
14 A Curtis.
15 Q Curtis, what?
16 A Curtis Perry.
17 Q And what was Curtis Perry?
18 A To be honest, with you, I don't know.
19 Q Did he give you a card?
20 A Yes, he did.
21 Q Do you have it there?
22 A Yes.
23 Q Can I see it?
24 A Yes.
25 Q Remember, I told you all the documents were
90
1 stolen from?
2 A (Witness nods head.)
3 Q Where?
4 A Well, you had indicated Shook, Hardy.
5 Q But which office, though?
6 A I have no idea.
7 Q That's where Curtis comes from.
8 Where does Curtis come from?
9 A I don't know.
10 Q Is he from Kansas City?
11 A I have no idea.
12 Q Kansas City?
13 A Kansas City.
14 Q What did Curtis tell you?
15 A I don't remember him specifically telling me
16 anything. The way the meeting was conducted is that they
17 asked once again for my opinion on the case, and we
18 reviewed what my evaluation was on the histologic type. I
19 had chaired or revised my initial diagnosis to that of a
20 peripheral adenocarcinoma with predominant bronchioalveolar
21 pattern and discussed why I felt that that was a more
22 appropriate diagnosis. And then we -- I don't remember him
23 bringing up anything specific or asking anything specific
24 about the diagnosis.
25 Q What does "peripheral" mean?
91
1 A At the edge. Towards the end of the -- and in
2 this case, at the edge or toward the pleural or end of the
3 lung parenchyma, the lung tissue itself.
4 Q Pleural with an -e?
5 A The pleura is the lining of the lung.
6 Q Right, pleural with an -e?
7 A That's right.
8 Q The more peripheral the black, as far as
9 causation to tobacco, the more peripheral, the stronger the
10 link, as far as causation, the weaker the link as far as
11 causation?
12 A My understanding is the weaker.
13 Q The weaker.
14 And once we get under the peripheral area, the
15 further we can push peripheral out toward the periphery,
16 the weaker the link continues to get.
17 Is that your understanding?
18 A Well, to a limited degree. I think there's

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limit. I think my understanding -- and again, this is not my area of expertise -- but my understanding is that there are central lesions, bronchiogenic lesions, that have a higher linkage to tobacco-induced tumor or carcinogenesis, and there are peripheral lesions; and I don't think that's measured or anybody's been able to measure that in millimeters. I mean, if something is one millimeter away

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from the pleura versus five milligrams away from the pleura, I don't think any studies like that have been possible.

Q All right.

Can you quantify in some way your peripheral finding, like I'm visualizing -- this is a terrible analogy, but what the heck -- a city, and then there's the urban core; and then there's some close in suburbs, and then some further suburbs and then, when you finally get out far enough, at some point it ain't the city anymore.

A I have you.

Q You with me so far?

A Yes.

Q Your periphery, where does your periphery fall in that analogy?

A The periphery. It depends on the architecture of the lung, but when you grossly cannot see a bronchus or you do not see bronchi, these are the main respiratory structures in the lung, those bronchi that are associated with cartilaginous rings, when you finally don't see those any longer, that's considered the peripheral portion of the lung. That's the periphery. And certainly any area within three sonometers from the pleura is generally considered the periphery. That would vary, of course, if you were talking about a child or an adult, but in an adult, that

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would be the generally accepted --

Q Okay.

So now we're clearly into the periphery; right?

A Right.

Q I want no know how far into the periphery or how far away.

A Well, this -- this particular tumor grossly was described as being a sonometer away from -- from the pleura. And the tumor itself as approximately one-and-a-half sonometers in diameter, so the center of that tumor is about .75 millimeters. So you're now about and 1.75 sonometers from the pleura itself --

Q Tell me --

A -- to the center of that tumor.

Q Okay. Sorry. Tell me about the three sonometers again. Tell me about that.

A Well, that's just kind of an estimate. It will vary from individual to individual. It depends on where those final bronchi end, the terminal bronchi.

Q Where does periphery start?

A It's a vague definition, and again, that's probably best defined by a surgeon.

Q Well, what about in terms of sonometers and anatomy, where does periphery start?

A Again, I would say, generally speaking, it's

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around three sonometers, but that's -- I don't think that's well defined in the literature.

Q Tell me again what Dr. Geller wrote.

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A Dr. Geller defined this as a papillary carcinoma.
Q He's wrong?
A In my opinion, that -- that subclassification is not the best classification for this tumor.
Q Did he -- let me withdraw that.
You're familiar with the way path reports are written; correct?
A Yes.
Q Sometimes is a pathologist's name on a report that that particular pathologist has not read in the normal course of business?
A No.
Q As you understand it?
A No.
Q So if Dr. Geller's name is on the path report, you've got a fairly high level of confidence that he, in fact, wrote the report?
A Yes, or at least that he reviewed it. I do know they have a residency and a Fellowship program there. I don't remember seeing a Fellow's name on that report. Sometimes the resident or Fellow will look at the case, and

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the person who is assigned to sign out a case officially, like Dr. Geller, might just review that briefly, depending on if the -- if it's a Fellow or who has postresidency training or if it's a resident; but he's still responsible for signing out the case, so he would have seen it, I'm sure.
Q That's your opinion?
A Yes.
Q Okay.
Do you see him in conferences?
A I have.
Q Ever talk to him?
A No.
Q Good reputation?
A Yes.
Q Were there any other pathologists' names on any of the reports besides Dr. Geller?
A No, not that I remember.
Q How many reports did you look at?
A Just that one.
Q Is that the only report that exists in the medical records that you have?
A Yes.
Q Okay.
Let's come on back to the meeting Number 3.

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Mr. Chris Perry, you've told me what you believe was his input to the meeting; correct?
A Uh-huh.
Q "Yes"?
A Yes.
Q Was there more?
A The meeting then, there was some time spent on expectations of a deposition and what would be required for a deposition, kind of going over what presentations and what things would be of interest to you.
Q Were they?
A Of interest to you.
Q Yes.
A Yes.

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Q Have I heard all of the things that you discussed would be of interest to me?
A I think so, yes.
Q Yes?
A Yes.
Q This is sort of a bottom line, and the bottom line is that these proceedings, other than being a Lawyer Relief Act, because these law firms get paid by the hour or the Court Reporter Relief Act, these proceedings are, so I don't get surprised at trial.
You follow that?

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A Yes.
Q Okay.
So just in case part -- portions of that last question aren't for judge or jury consumption, let's do it again. The purpose of this deposition is so that I don't get surprised at trial and that I hear all of the opinions that you intend to render at trial now, here, today.
You did understand that?
A Yes.
Q The lawyers told you that?
A Right.
Q Have I heard all of the opinions that you intend to offer at the time of trial?
A Yes.
Q Have I heard all of the reasons for those opinions?
A Yes.
Q That was a "yes" that --
A It was hesitant.
Q Slowly and hesitantly -- good word.
The jury won't know that, so I'm giving you an opening right now.
You want to add something?
A I don't think you've really reviewed or gone over why there would be a discrepancy between, or if it's

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important that there's a discrepancy between papillary carcinoma and bronchioalveolar carcinoma.
Q Is it important?
A No.
Q Why would there be a discrepancy?
A It's a interpretive difference. There's -- as we discussed before, there's a heterogenate in these adenocarcinomas, and there is a difference between interviewer review of cases. There's not always -- or there frequently is a poor consensus, particularly with these two tumors, even with the experts.
Q It's in the eye of the beholder?
A That's correct.
Q So what you're saying is: How do you say it, adenocarcinoma? Say it.
A Adenocarcinoma.
Q Adeno.
So what you're saying is adenocarcinoma can mimic other kinds of tumors.
A No, within adenocarcinoma, there's a variety of different subtypes. And, in particular, the two subtypes, bronchioalveolar carcinoma, plain adenocarcinoma with bronchioalveolar fetes and papillary carcinoma cannot misinterpreted, but interpreted differently and -- and provide nonconcensus among pathologists; so that if you

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1 were to have 50 pathologists, you could have a very high
2 variability in how they would specifically subtype the
3 tumor.
4 And one of the reasons for that is, that we,
5 as -- as hospital pathologists, not epidemiologists, but
6 hospital pathologists, don't generally try to spend a lot
7 of time subtyping these tumors. We try to do the best and
8 try to get the interpreted pattern, but it's not as
9 important to us as it may be to the lawyers subtyping some
10 of these.
11 Q Well, let's forget us lawyers.
12 Is it less important to working hospital
13 pathologists than it might be to an academic pathologist or
14 a publishing pathologist?
15 A Yes.
16 Q Both?
17 A Yes.
18 Q Who's on my side?
19 A I -- I don't think --
20 MS. TANG: Objection to the form of the question.
21 Vague and ambiguous.
22 BY MR. PIUZE:
23 Q You mean besides truth, justice and the
24 American way? Who's on my side?
25 A I don't think it really makes any difference in
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1 this particular case. I think on this -- the subtyping of
2 this tumor is really irrelevant to this case. I think
3 the -- the issue that is important is that it's an
4 adenocarcinoma -- it is a subtype -- and that it's a
5 peripheral lesion.
6 Q Okay.
7 And so if that's good or bad for me, it's just
8 as good or just as bad regardless of the subclass you put
9 on it?
10 A That's correct.
11 Q Between papillary on the one hand and --
12 A Bronchioalveolar.
13 Q -- on the other hand.
14 A That's correct.
15 Q "Fibrosis," was that the word we were using
16 before?
17 A Right.
18 Q Tended to lead toward what?
19 A Well, with the new classification, the
20 appearance of fibrosis kind of muddies the -- the
21 definition. Strictly speaking, bronchioalveolar carcinoma
22 should not be associated with any or much fibrosis. But
23 that's controversial in and of itself because many people
24 feel that bronchioalveolar carcinoma can be associated with
25 fibrosis, and certainly any tumor can potentially create
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1 its own fibrosis.
2 So it becomes kind of a -- a controversial
3 area, but if one were to strictly define bronchioalveolar
4 carcinoma, as a tumor with the fetes that this has at its
5 peripheral periphery, but without fibrosis, this would not
6 be classified as a bronchioalveolar carcinoma by itself.
7 Q What are the recognized texts in the pathology
8 field that deal with carcinoma?
9 A Well, with lung -- with lung cancer or with any
10 of the -- the tumors really, the primary texts that are

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used by pathologists in this country are the AFIP fascicles.
Q What is AFIP?
A The Armed Forces Institue of Pathology.
Q What's a fascicle?
A The fascicles were monophotographs that were written by specialists in each field. So there's monograms or fascicles on just about every organ system. And defining specific classifications of tumors in each one of those systems by those experts and then providing pictures and categories and -- and a variety of different tumor appearances that can appear under each of those subtypes.
Q You mentioned that earlier in the deposition, didn't you? Is that something you reviewed?
A Yes.

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Q Keep it on your book shelf?
A Yes.
Q What other recognized texts or periodicals are there in the pathology field in regard to cancer tumors?
A Well, I think there are general pathology books like "Sternbeck's Pathology, Surgical Pathology Book." There are journals that we use --
Q Such as?
A The "American Journal of Surgical Pathology."
Q Okay.
A Primarily. But the primary bible so to speak of the working American pathologist is the AFIP fascicle.
Q Okay. Now, third meeting. We're done with Chris Perry.
MS. TANG: I believe it's Curtis Perry?
THE WITNESS: Curtis.
MR. PIUZE: Sorry. It is.
Q Because when you were saying "Curtis," I was thinking Curtis LeMay. Do you know who he is, Curtis LeMay?
A No.
Q He was the first head of the Strategic Air Command. He was the mastermind behind the bombing of Japan, and it was Curtis LeMay that coined the phrase, "Bomb them back into the Stone Age."

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You've heard that?
A Yes.
Q Anyway, he's got a shrine near Lincoln, Nebraska between Lincoln and Omaha, the Strategic Air Command which was his baby that he created. So you go in there, it's the Curtis LeMay Memorial where all these dead bombers are there.
After Curtis was done speaking with you, what did Angel Tang have to say?
A I don't think Angel had too much to say. I don't think -- I don't remember Angel having much to say at either one of the meetings she was at.
Q Okay.
A There was somewhat of a round-table discussion on what to expect in the deposition, and had you had a deposition before and -- and what to bring, and that was pretty much it.
Q Have you -- is everything that you brought up on the table now?
A No. No.
(A brief recess was taken.)

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22 BY MR. PIUZE:
23 Q Now?
24 A Yes.
25 Q What's under your glasses?
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1 A This is an envelope that someone said was from
2 you. And I believe it is a check, but I don't know. I
3 haven't opened it.
4 MS. TANG: It is the check covering the first hour
5 of Dr. Kruppe's deposition that I placed in it A&P envelope
6 for convenience.
7 BY MR. PIUZE:
8 Q Okay.
9 What did Curtis have to say to you at meeting
10 Number 3?
11 A Again, I --
12 Q Excuse me.
13 A Yeah.
14 Q I did it again. Chris.
15 A Chris, again, was just part of this round-table
16 discussion. I think -- I don't know whether they were
17 surprised that I had somewhat modified my initial diagnosis
18 or not.
19 Q Did they have poker faces?
20 A Pretty much. Just a round-table discussion on,
21 again, why I modified that diagnosis and then a discussion
22 on the deposition. And that's -- I -- I don't remember
23 anything specific.
24 Q No more --
25 A That anyone said.
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1 Q No more words like "fibrosis" entered the
2 conversation?
3 A Probably on my part. Just indicating --
4 Q No --
5 A Indicating.
6 Q That's okay, on your part.
7 A No. No.
8 Q No life lines?
9 A No.
10 Q What about Mary Pat Reardon, what'd she have to
11 say?
12 A Again, I think mostly just some comments about
13 preparation for depositions.
14 Q Such as?
15 A We may have discussed -- I really don't
16 remember specifically what --
17 Q See, I'm wondering what a registered nurse
18 would be telling you about preparation for a deposition.
19 I'm fascinated.
20 What was it?
21 A I don't know specifically.
22 MR. PIUZE: Okay.
23 Let's make this file cover Exhibit 3.
24 / / / /
25 / / / /
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1 (Whereupon, the document referred to
2 was marked Plaintiff's Exhibit 3 for
3 identification, a copy of which is
4 attached hereto.)
5 BY MR. PIUZE:
6 Q That's a copy of Exhibit 2?

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7 A Yes.
8 Q Okay.
9 I'll give that book to you. Also, inside this
10 file for the record folder is this January 24 letter?
11 A (Witness nods head.)
12 Q "Yes"?
13 A Yes.
14 Q What's that all about?
15 A That's my declaration of what the fees would
16 be. And then I think I had a -- the first-hour bill that I
17 sent to them.
18 Q What's today's date?
19 A It is the 12th of March.
20 Q You say -- is this letter that's addressed to
21 Shook, Hardy and Bacon dated January 24?
22 A Yes.
23 Q Is this the only letter you've sent on this
24 case?
25 A Yes.
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1 Q You've received no letters in this case?
2 A No.
3 Q That's a true statement?
4 A Yes.
5 Q And this January 24 letter, you say, "It's been
6 a pleasure to work with you over the past few cases."
7 "Few" means?
8 A Usually more than two or --
9 Q Sure does.
10 A Yeah. Yeah.
11 Q How many?
12 A Actually, there was a -- a separate case that
13 was brought off to me.
14 Q "Brought off" to you?
15 A The slides were brought to me to review.
16 Q What do you mean, separate?
17 A It was separate from this case, but it was
18 brought at the same time; and I can't remember whether it
19 was with this case or the first case that I reviewed. I --
20 with the other company, the other legal firm.
21 Q What other legal firm?
22 A The Womble legal firm.
23 Q I'm not following you. You're writing to Shook
24 Hardy in Kansas City. Excuse me. I apologize. Let's
25 start again. I'm not following you. You write to Shook,
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1 Hardy in San Francisco, telling them it's been a pleasure
2 working with them on the past few cases, and you're telling
3 me one of those few cases was a case you worked on with
4 Wombol, Carlisle, Sanrich and Rice?
5 A No. No.
6 Q Okay.
7 Tell me again.
8 A It may have been a misprint on my part, I don't
9 know. And to be honest with you, I don't remember what
10 that other case was. I probably haven't even sent a bill.
11 Can I look at the letter again?
12 Q Yes.
13 A For my reference? I'm sorry. The two cases
14 were brought at the same time. Sanchez and Boeken's case
15 were brought at the same time, so it was the same firm that
16 brought that. The Womble case was a separate case, and
17 I -- I really don't know what the name was.

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Q Okay.
I don't really care very much, if at all, but
we're still back to Shook, Hardy and the past few cases.
"Few," as you've already acknowledged ,meaning typically
more than two?
A Two. It's two cases.
Q So "few" means two?
A In this case, obviously a misspeak, yes. Two
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cases.
Q You say that these have been interesting and
challenging cases.
Why were they challenging?
A I'm sorry.
MS. TANG: I have to object to the extent that this
line of questioning asks about facts of the case nonrelated
to Boeken because Dr. Kruppe has not been designated as an
expert in any other case aside from Boeken.
MR. PIUZE: Okay.
MS. TANG: And as such, facts pertaining to any
other case as slides from the Boeken case are attorney work
product because Dr. Kruppe will be acting in her capacity
as a confidential consultant.
MR. PIUZE: Does that mean that when you get to be
the silent partner with Chris in some other place with some
other pathologist, you can feed Dr. Kruppe's line to the
pathologists who's reading those lines?
MS. TANG: Object to the inappropriate statement.
MR. PIUZE: What's the answer?
MS. TANG: I don't have an answer for you.
MR. PIUZE: Okay.
Are you -- are you saying that you allowed the
witness to be discussing Sanchez even though she's not
designated?
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MS. TANG: No, I'm not.
MR. PIUZE: Okay.
Q Is Sanchez the name of the other case?
A Apparently that was a case that was brought at
the same time.
Q By Shook, Hardy?
A Apparently.
Q Okay.
So I want to know why it was a challenging
case.
MS. TANG: Boeken?
MR. PIUZE: No, the other case.
Q Why was it challenging?
MS. TANG: I'm sorry. I'm instructing the witness
not to answer any further questions.
MR. PIUZE: You can't do that.
MS. TANG: I can do that.
MR. PIUZE: You can't instruct her not to do that.
MS. TANG: She is our client.
MR. PIUZE: She's your client? Okay. Okay.
MS. TANG: No, I'm sorry.
MR. PIUZE: There's an admission against interest.
Now there goes your bonus.
What do you want to do? Is she your client, or
isn't she?
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MS. TANG: Philip Morris is our client. Dr. Kruppe
has been hired as an expert witness to relay her opinions

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about the Boeken matter.
MR. PIUZE: Got that. I'm with you so far.
MS. TANG: Okay.
MR. PIUZE: This is like a lawsuit. She's an expert witness. You hired her.
MS. TANG: That's right.
MR. PIUZE: Okay. Great. You can't instruct her.
THE WITNESS: I think I can answer this question for -- for all purposes. Obviously, these cases that they're bringing to have reviewed are not going to be straightforward carcinomas, that are straightforward bronchiogenic central carcinomas.
BY MR. PIUZE:
Q Doctor, is that obvious?
A I don't think they would require expert witness for cases that are straightforward.
Q Have you ever --
A Carcinomas.
Q Have you ever heard from any sorts that these folks here from Shook, Hardy or Arnold and Porter or any other law firm go to trial defending a tobacco company and agree that tobacco caused the tumor? Have you ever heard that?

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A No, we're talking about -- no. But we're talking about histologic types.
Q Yes.
A And those that are perhaps unusual or less common, and I think that's when they would seek to have expert opinions; and it became apparent after seeing just these two cases and the case prior that that seemed to be the running theme, that these were not going to be straightforward cases.
They usually had a little twist to them. Maybe a -- a nonconcensus among all pathologists or a question of perhaps could they be metastatic, something along that line. It wasn't going to be something that a first-year resident could just at the spur of the moment or deign as a bronchiogenic carcinoma.
Q Bronchiogenic carcinoma, meaning tobacco?
A A central -- no, being a central carcinoma or a squamous cell carcinoma or a small cell carcinoma.
Q So that's why these cases were challenging?
A Yes.
Q Did you feel challenged?
A Yes.
MR. PIUZE: Okay.
This is Exhibit 4 that we've been discussing.
/ / / /

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(Whereupon, the document referred to was marked Plaintiff's Exhibit 4 for identification, a copy of which is attached hereto.)
BY MR. PIUZE:
Q Now, the other stuff that you showed me is in the totality?
A Yes.
Q Except for those things back at the office?
A Right.
Q Is there anything else back at the office that we haven't discussed previously?
A No.

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Q The totality is here on the table; right?
A Right.
Q Let's just go through the rest of it.
Is this group of documents, the --
A Those are selected items from the chart.
Q You selected it?
A Yes.
Q Not lawyers?
A No.
Q Why did you select them?
A Again, that's the path report, oncology report, some radiology reports, perhaps the surgical op note, just

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to correlate with the pathology.
MR. PIUZE: Collectively as Exhibit 5.
(Whereupon, the document referred to was marked Plaintiff's Exhibit 5 for identification, a copy of which is attached hereto.)
BY MR. PIUZE:
Q And then in this folder are what?
A These are -- these are all just a variety of articles that are listed there. Some of these -- some of these are also a collection of things that were not reviewed for this case but concern this -- this is part of my bronchioalveolar carcinoma file that some of those articles are very old, and it has to do with a clinical pathologic conference that I gave several years ago on this.
Q When you say you have a bronchioalveolar file --
A Yes.
Q -- where does that live?
A Excuse me?
Q Is it -- do you keep it in your library in your office?
A It's in my file cabinet; right. This is it.
Q It pre-existed --

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A Yes.
Q -- Chris?
A Yes.
Q Are these documents in this file folder here --
I can't make a question out of that, so I'm going to withdraw that.
This is not the way your file was in your file cabinet before Chris?
A Yes.
Q None of these have been added to your file folder since Chris contacted you?
A Let me see. I may have stuffed some of the articles that he had. I don't believe so. No. No, these are mine. These are my articles.
Q Which all pre-existed --
A Yes.
Q -- Chris's contact with you?
A Yes.
Q And pre-existed Bonne, Bridges' contact with you?
A Yes.
Q Okay.
And what does it say on the outside?
A That's my name, my extension. At St. Mary's.

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25 This was a CPC, clinical pathologic conference I gave in
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1 1989, and this was a file I used to present that.
2 Q Did --
3 A It was concerning bronchioalveolar carcinoma.
4 Q Gave to whom?
5 A The house staff and medical staff at St. Mary
6 Medical Center when I was on staff there.
7 Q Where's that?
8 A In Long Beach.
9 MR. PIUZE: Let's make it 6 collectively.
10 (Whereupon, the document referred to
11 was marked Plaintiff's Exhibit 6 for
12 identification, a copy of which is
13 attached hereto.)
14 BY MR. PIUZE:
15 Q So then, what is -- is this one unit? Is this
16 group of documents I'm giving you, or is that different
17 things mixed together?
18 A No, there's different -- there's different
19 articles in here.
20 Q What are those?
21 A These are articles that they sent to me. Some
22 of the articles.
23 Q The top one interests me only because it
24 doesn't look like a finished product. I don't see a title
25 on it, a publication, date, place.
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1 A I have no idea. I don't know where this came
2 from.
3 Q It looks like a term project that my kid does
4 on the computer.
5 A Well, it may be. I have no idea.
6 Q Well, it may not be.
7 Did you read this, Doctor?
8 A Yes.
9 Q Do you have any idea who wrote it?
10 A Nope.
11 Q Is this a peer review article?
12 A I don't know.
13 Q Has this ever been published?
14 A I don't know.
15 Q Is it worth the paper it's written on?
16 A Yes.
17 Q You agree with this, Number 7 that I'm holding
18 up here with no title?
19 A Is it 7 or "A."
20 Q Well, you've got "A," but I'm going to make it
21 7.
22 A Oh, yes.
23 Q Who put the "A" on it?
24 A I did.
25 Q How come?
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1 A There was this notebook that they submitted,
2 and these were the articles that I pulled to read. And so
3 the notebook had binder designations, some of -- an "A" and
4 then a bunch of numbers.
5 Q The next one I'm holding has someone else's
6 number 7 on it.
7 A Yes.
8 Q Volume two of "Cancer Medicine."
9 Have you ever heard of that book?

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A No, not until I received this.
Q This came from Shook, Hardy?
A Yes.
MR. PIUZE: 8. I'll make it Exhibit 8.
(Whereupon, the documents referred to were marked Plaintiff's Exhibits 7 and 8 for identification, copies of which are attached hereto.)
BY MR. PIUZE:
Q I'll say for the record that my 8's bigger than their 7 that was already on there. It's in the furthest upper right-hand corner. So these -- all the numbers I'm looking at on these pages in here were pre-existing. When you obtained these documents, they had all these numbers on there?
A No, I put those numbers on there.

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Q Your numbering system and mine are only one off. I hate to change all these things. There must be a way.
You read all this stuff?
A Yes. I -- I can't say that I read every word of some of these, because, for example, this, again, is a epidemiology and environmental sort of article. Much of this has little relevance to my expertise, and -- and some of it's beyond my -- my understanding, even.
Q Okay.
The next one I'm holding up is called, what?
A The "Changing Pattern of Lung Carcinoma."
Q And have you already written on "8" on that?
A Yes.
Q I'm going to add an "A" so it's 8-A, Exhibit 8-A to this deposition. And then I'm just going to adopt your numbering system from here on out --
A Uh-huh.
Q -- okay?
A Yes.
(Whereupon, the document referred to was marked Plaintiff's Exhibit 8-A for identification, a copy of which is attached hereto.)
MS. TANG: Dr. Kruppe, are these your originals?

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THE WITNESS: Yes.
MS. TANG: So are we going to be --
MR. PIUZE: These what?
MS. TANG: These are Dr. Kruppe's originals so we need to make copies for admission of exhibits in order to preserve the integrity of Dr. Kruppe's file.
MR. PIUZE: Okay.
MS. TANG: So we'll do that after the deposition?
MR. PIUZE: Your humble servant, Miss Tang. Any way you want to do it, you just say the way. Whatever's good for you.
So these -- this is me talking to the piece of paper now, not to you because the witness has only delivered certain of the documents. I'm just going to follow her numbering system which will leave some blanks in the court reporter's exhibit-keeping system for which I neither apologize for anything else, but I'm just saying that for the record.
So the next one is 19. There's a note here on 19 and something highlighted in yellow.

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21 Is that you?
22 A Yes.
23 (Whereupon, the document referred to
24 was marked Plaintiff's Exhibit 19 for
25 identification, a copy of which is
121
1 attached hereto.)
2 BY MR. PIUZE:
3 Q How come?
4 A Oh, it was something concerning environmental
5 exposure, smoking and risks associated with various
6 cancers.
7 Q What does that have to do with your reading of
8 the path slides in this case, please?
9 A Nothing.
10 Q How come you took the time to put that note on
11 there?
12 A Because I was unaware of that.
13 Q Of which?
14 A Of the specific risk factors or the relative
15 risk --
16 Q In smoke --
17 A -- association.
18 Q Could you read, just read what -- out loud what
19 you highlighted in yellow, please?
20 A "In smokers the risk for squamous and small
21 cell lung carcinoma is 20 to 25 times higher than for
22 nonsmokers. In contrast, the risk for adenocarcinoma is
23 only three times as high for smokers than for nonsmokers."
24 Q And what was it that you were unaware of?
25 A The specific risk relevance.
122
1 Q The exact numbers, you mean?
2 A Right.
3 Q Did either of those numbers surprise you?
4 A Somewhat.
5 Q How?
6 A It seemed lower for adenocarcinoma than I had
7 expected.
8 Q What were you expecting, generally?
9 A Something higher.
10 Q Well, I know. I got that part.
11 What?
12 A I -- I had no idea, none.
13 Q And this particular exhibit --
14 A To be honest, but I didn't know what the
15 relative risk rates were related to squamous cell, so I
16 wouldn't know relatively speaking what adenocarcinoma would
17 be.
18 Q Okay.
19 This number Exhibit Number 19 that we've been
20 discussing, is entitled what?
21 A "Occupational and Environmental Respiratory
22 Disease."
23 Q What if I told you that there are other places
24 you could look that would have a different ratio than 3 to
25 1? That wouldn't surprise you a bit, would it?
123
1 A Not at all.
2 Q But it would sure surprise you if the ratio was
3 lower than 3 to 1, wouldn't it?
4 A Well, perhaps.
5 Q Well, it would because you just stated you were

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6 surprised by 3 to 1; correct?
7 A Yes.
8 Q So why did you hedge with perhaps?
9 A I guess --
10 MS. TANG: Objection. Argumentative.
11 MR. PIUZE: Don't answer. I instruct you not to
12 answer my question.
13 Q Is that okay with you?
14 A Yes.
15 Q Thank you.
16 Now, the remainder of these articles don't have
17 numbers on them.
18 A Right.
19 Q Why?
20 A They were -- they were either loose or separate
21 in the binder that they had, and the rest of them are my
22 articles --
23 Q Can you --
24 A -- that I had pulled.
25 Q Can you cull out your articles here, please?
124
1 A Yes. These -- these three are my articles.
2 Q Okay.
3 Which I'm putting them aside here for now.
4 Which means that these are the -- what'd you call them,
5 nondifferentiating? That's, in effect, what you said.
6 A Nondifferentiated articles?
7 Q Articles, yeah.
8 A No, these are the articles that were not
9 designated by the binder. They were either loose within
10 the binder, or they didn't -- they were above any
11 designated numbers.
12 Q Okay.
13 Well, I'm just going on seeing that your
14 highest number was --
15 THE REPORTER: 19.
16 THE WITNESS: 19.
17 MR. PIUZE: Yeah, I remember.
18 Q Why am I such a --
19 A I think the occupational one was what.
20 Q Tell you what. I'm going to mark these
21 starting at 11, "these," meaning the ones that were in the
22 binder.
23 What was your terms again, they it was either
24 in the binder and --
25 A They were either loose in the binder or not
125
1 designated by a number in the binder.
2 Q Numbering them 11, 12, 13. What have we got
3 over here? Is this more of the same?
4 A I think you already looked at these. These
5 were more articles that were in there.
6 (Whereupon, the documents referred to
7 were marked Plaintiff's Exhibits 11,
8 12 and 13 for identification, copies of
9 which are attached hereto.)
10 BY MR. PIUZE:
11 Q Can you separate them out for me, please?
12 A (Witness complies.)
13 MR. PIUZE: 14.
14 THE WITNESS: Let me make sure. I believe this is
15 the right way.
16 MR. PIUZE: 15, thank you.

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(Whereupon, the documents referred to were marked Plaintiff's Exhibits 14 and 15 for identification, copies of which are attached hereto.)
BY MR. PIUZE:
Q And now let's get to yours that you added to the mix.
You've highlighted some of your articles; correct?

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A Right.
Q Why?
A Well, this may have been done previously, I don't -- I don't remember.
Q Could you read what was highlighted?
A Yes. "Peripheral tumors found in 30 percent of the carcinomas occurring before 1978 were found in 42 percent of the carcinomas from 1986 to 1989. The core responding decrease in the centrally originating bronchial carcinoma was from 69.3 percent to 57.3 percent. The greatest change in histologic cancer type was that of the incidence of bronchioalveolar carcinoma more than double from 9.3 percent in the earlier period to 20.3 percent in the 1986 to 1989 period. Nonsmokers and former smokers showed a decreased incidence of the bronchiogenic cancers and an increase of cancer occurring in the peripheral lung parenchyma.
Carcinomas lying in the peripheral parenchyma of the lung with no bronchial involvement may have a different cause than bronchiogenic carcinomas. Adenocarcinomas are associated less directly with tobacco use," and then I highlighted "1991." You want me to go further?
Q Yes, please.
A Then there's dot, dot, dot. "As a tall

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columnar cuboidal cell proliferation that fills adjoining alveoli often falling into a papillary formation. The cells may rest on the stroma of the distal air spaces and project into the lumen." Then I -- dot, dot, dot. I highlighted 1977 and 1979, "Only 3.5 percent or recorded as bronchioalveolar carcinoma. Bronchial alveolar carcinoma was found in 14.7 percent of cases, and 20.5 percent of the cases diagnosed from 1986 to 1989. It does not appear to be related to smoking."
MR. PIUZE: Thank you. So that's Number 16.
(Whereupon, the document referred to was marked Plaintiff's Exhibit 16 for identification, a copy of which is attached hereto.)
BY MR. PIUZE:
Q There's two more here that you brought and added to the mix. The next one has the scintillating title of?
A "Pulmonary Neoplasms."
Q Could you take a look, you see where you've got a note on that one?
A Yes.
Q Why?
A It -- it states "No stromal invasion as seen in bronchioalveolar carcinoma. Adenocarcinoma with

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predominant bronchioalveolar pattern in areas of invasive

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growth is categorized as adenocarcinoma with mixed subtypes."
Q Why did you highlight that?
A I -- I was trying to find references to bronchioalveolar carcinoma in association with sclerosis and invasive decimal plastic or fibrotic formation.
Q What's the difference between sclerosis and fibrosis?
A None.
Q Are there other -- I withdraw that.
There are a few other passages in there I believe that I saw that are highlighted.
A Okay.
Q Could you just flip through it and read to me and find what else you find highlighted, please?
A Okay.
A "Aciner and papillary adenocarcinomas may be seen in their pure form. But more often mixed with other components including a bronchioalveolar pattern." I believe that's the only highlighted areas.
Q Has Bonne, Bridges ever represented you?
A No.
Q Have you ever testified at trial?
A Yes.

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Q Who was the defense attorney?
A I really don't remember.
Q One time only?
A Yes.
Q This firm?
A Excuse me?
Q This firm?
A I believe it came out of this firm, but I really don't know the association between this firm and the firm that was the defense attorney. It -- it was tried up in L.A., and I met that attorney for the first time when I went up to L.A. to testify.
Q Was it a Bonne, Bridges lawyer?
A It may have been.
Q The name of the case?
A I don't remember.
Q Topic?
A It was concerning a pancreatic marsupialization surgery that ruptured, and the patient subsequently died postoperatively.
Q Did -- I'm still on Exhibit Number 17 which is the "Pulmonary Neoplasm" exhibit. There's some highlighted.
Did you read that for the record?
A No, I didn't. I'm sorry.

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Q What page?
A This is page -- let's see. 1,084.
Q Okay.
Could you read the highlighted stuff into the record, please?
A "Although adenocarcinoma is subdivided histologically into aciner," parentheses, "tubular," end parentheses, comma, "papillary, bronchioalveolar," comma, "and solid carcinoma with mucus formation by the WHO classification, it is very complicated from the standpoint of cytologic differentiation, proliferative activity, and so on."

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13 And then I've highlighted six different
14 cytologic types. "Number 1, bronchial surface cell type
15 with little or no mucus production; Number 2, goblet cell
16 till; 3, Bronchial gland cell type; 4, Clara, c-l-a-r-a,
17 cell type; Number 5, Type II alveolar epithelial cell type;
18 and, 6, mixed-cell type or indeterminate cell type."
19 (Whereupon, the document referred to
20 was marked Plaintiff's Exhibit 17 for
21 identification, a copy of which is
22 attached hereto.)
23 BY MR. PIUZE:
24 Q Have we now reviewed all of the documents that
25 you've brought with you here today?
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1 A Yes.
2 Q Have you told me the bases for all of these
3 opinions which you previously said you intend to give at
4 the time of this trial?
5 A Yes.
6 Q Would you like to go?
7 A It would be fine with me.
8 Q Okay.
9 You can go.
10 A Thank you.
11 MR. PIUZE: Thank you very much.
12 Same stip?
13 MS. TANG: Same stip.
14 "MR. GOLDSTEIN: Back on the record.
15 "I'd like to propose a stipulation that we
16 relieve the court reporter of her responsibility under the
17 Code, that the transcript of this deposition shall be
18 forwarded to counsel -- oh, I did have to make one proviso,
19 and that is that I would request that you produce and
20 photocopy the copies of the transmittals and the billings
21 and the notes that were identified in the deposition that
22 have not been produced.
23 "MR. LEITER: To the extent that she has
24 retained them, we will. My understanding is they're mainly
25 just transmittal letters.
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1 "MR. GOLDSTEIN: Okay.
2 "MR. LEITER: We can give you copies of the
3 billings.
4 "MR. GOLDSTEIN: I'd ask that when you send a
5 copy to Mr. Piuze, you also send a copy to the reporter.
6 That way we can attach it to the deposition as exhibit next
7 in order. We've agreed to relieve the court reporter of
8 her obligations that the original copy shall be forwarded
9 upon completion to Mr. Leiter.
10 "She will then forward it on to the witness.
11 She may have 14 days in which to review, make any changes
12 and sign them under penalty of perjury. That in the event
13 that the transcript is not available or that this witness
14 is called without the 14 days' time having elapsed, that
15 you -- that Mr. Leiter has agreed to provide any changes to
16 the deposition to Mr. Piuze within 48 hours of her
17 testimony, and that if for any reason that does not occur,
18 that a copy of the deposition may be used for any purpose
19 whatsoever.
20 "So stipulated?
21 "MR. LEITER: So stipulated with one minor
22 change.
23 "MR. GOLDSTEIN: Sure.

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"MR. LEITER: As I reflect on it, the judge has indicated we'll be given 24 hours' notice of witnesses

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testimony, so should we get to that point, I would provide any changes if we haven't been able to do it within the two week' proviso 24 hours before her testimony when we -- when we know that it's 24 hours before she'll testify.

"MR. GOLDSTEIN: I would only say that the 24-hour or 48-hour proviso, my understanding would only kick in if the 14-day period hasn't expired.

"MR. LEITER: I understand. I understand.

"MR. GOLDSTEIN: That's fine. Thank you."

(Whereupon, the document referred to was marked Plaintiff's Exhibit 18 for identification, a copy of which is attached hereto.)

(Whereupon, the deposition was concluded at 4:33 P.M.)

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STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I declare under penalty of perjury that I have read the foregoing transcript. I have made any corrections, additions, or deletions that I was desirous of making in order to render the within transcript true and correct.

IN WITNESS WHEREOF, I have hereunto subscribed my name this day of , 2001.

CLAIRE KRUPPE, M.D.

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STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

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I, DONNA J. RUDOLPH, CSR NO. 9652, do hereby certify:

That, prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein set forth and thereafter transcribed by computer under my direction and supervision, and I hereby certify the foregoing transcript is a true and correct transcript of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 15th day of March, 2001.

DONNA J. RUDOLPH, C.S.R. 9652

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